REGULATORY REFORM—VOLUME III
INTERSTATE COMMERCE COMMISSION

HEARINGS

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

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[1] Appointed to committee Jan. 27, 1976.
[2] Appointed to subcommittee Feb. 4, 1976.

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REGULATORY REFORM—INTERSTATE COMMERCE COMMISSION

MONDAY, FEBRUARY 23, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
Washington, D. C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. John E. Moss, chairman, presiding.

Mr. Moss. The subcommittee will be in order.

The subcommittee now begins the second in its series of regulatory reform oversight hearings regarding nine of the agencies coming (in whole or in part) within the jurisdiction of the Interstate and Foreign Commerce Committee. This morning's hearing is on the Interstate Commerce Commission.

Established in 1887, the ICC has been a prototype for the other U.S. regulatory commissions. We shall pay particular attention in this hearing to how the oldest U.S. regulatory agency has incorporated current standards of consumer or end-user protection and current goals for encouraging new entrepreneurs into the Commission's programs.

The subcommittee has suggested that each agency head prepare a 20-minute fundamental policy statement in a common format highlighting the agency's public and consumer protection mission, the extent of public and consumer participation in the regulatory process, what deregulation or revised regulation might be needed, and comprehensive agency compliance and enforcement information for the last complete fiscal year, 1975.

Before we can finally recommend new or revised regulatory authorities or powers, we must have a clear idea of the extent of regulatee compliance with existing legal requirements.

Since the record we are compiling today, and throughout this series, will be one of the principal sources from which the subcommittee regulatory reform report and legislative recommendations will be drawn, I would ask at this time for unanimous consent that the record of the hearing remain open for 10 days for supplementary statements by the Commissioners and for such material as the subcommittee may request from the agencies or outside experts. I also ask unanimous consent that at the appropriate places in the record of hearings relevant staff studies, questionnaire returns and other pertinent documentary material may be included.

Is there objection?

Hearing none, it will be the order of the subcommittee.

First, I should like to express the subcommittee's deep concern over the costs which may have been incurred by the consumer and the public from what the Commission's Staff Study Panel on Regulatory Reform found in the October 8, 1975, Report on the Commission's Compliance Program. While I ask that this document be made a part of the record of hearing [see p. 83], I should like to underscore that it alleges a massive failure of regulatee compliance with the law and a pattern of enforcement discrimination against the small carrier. Let me just cite two findings from this study.

First, major areas of regulatory concern are virtually untouched by our enforcement program. Redirection is imparatively needed.

Second, "the large majority of investigations conducted and cases concluded involve operating rights violations against extremely small motor carriers (less than $300,000 annual revenues), which have little economic impact. Typically, they are easy to develop and are made to satisfy the requirements of the 'numbers game.' "

This study and related documents are of major importance to the subcommittee's overall assessment of the Commission's regulatory program. The subcommittee, therefore, intends today to conduct a careful examination of the findings and recommendations of the Staff Study Panel on Regulatory Reform regarding the ICC compliance program.

It is our hope that what we learn here today will be beneficial to other Federal regulatory agencies faced with similar problems as well as other congressional committees performing the fundamentally important task of oversight.

Other issues the subcommittee may wish to consider are the use of economic analysis in agency proceedings to insure that tariffs and entry policy are made to maximize consumer benefit in terms of price, quality of service, and availability of service; the several proposals for an Office of Public Counsel to give consumers an effective voice within the Commission; and the sensitivity of the Commission to the problems faced by the small business.

Finally, the Office of Management and Budget's denial of the Commission's request for additional money and positions raises the recurrent question of the Commission's independence in reporting directly to the Congress. I should like to cite a pertinent extract from a July 31, 1975, Congressional Research Service—American Law Division Study, entitled "Regulatory Reform: Background Analysis for Study of Regulatory Independence," prepared for this subcommittee.

One of the continuing obstacles to independence of the regulatory agencies, it has been argued, is the longstanding practice of the Office of Management and Budget of requiring clearance of budget requests and comments on legislation by those agencies. I quote:

> . . . A practice has developed since the mid-30's of requiring regulatory agencies to submit their legislative proposals, or requested comments on proposed legislation, to Congress through OMB. There appears to be no statutory authority for this practice and in some instances there is explicit statutory language to the contrary. The Federal Trade Commission Act, 15 U.S.C. 46(f), grants the FTC power "to make annual and special reports to Congress and to submit therewith recommendations for additional legislation . . ." A somewhat similar provision applies to the ICC, 49 U.S.C. 21, and to the SEC U.S.C. 78w(B).

The Chair would agree that the role of OMB is often a major obstacle to regulatory independence and effectiveness. It is an issue of regulatory reform the Congress must certainly address.

At this time the Chair is very pleased to welcome the members of the ICC and Chairman Stafford of the Commission to this session.

Mr. Chairman, do you want your colleagues with you?

Mr. STAFFORD. I would like several of them with me at the desk if I may.

Mr. Moss. Fine. As is the custom at these oversight hearings, we swear all witnesses.

I wonder if you can rise so that you can all be sworn. We will swear you in en bloc.

Do you solemnly swear that the testimony you are about to give the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

[All witnesses replied, "I do."]

TESTIMONY OF HON. GEORGE M. STAFFORD, CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY A. DANIEL O'NEAL, COMMISSIONER; ROBERT J. CORBER, COMMISSIONER; ARTHUR J. CERRA, GENERAL COUNSEL; ROBERT L. REBEIN, MANAGING DIRECTOR; EDWARD J. SCHACK, ASSOCIATE DIRECTOR; ERNEST R. OLSON, DIRECTOR, BUREAU OF ECONOMICS; BERNARD G. GOULD, DIRECTOR, BUREAU OF ENFORCEMENT; THEODORE C. KNAPPEN, LEGISLATIVE COUNSEL; THOMAS BYRNE, ASSISTANT TO THE DIRECTOR, BUREAU OF OPERATIONS; ALAN M. FITZWATER, DIRECTOR, RAIL SERVICES PLANNING OFFICE; OWEN KATZMAN, ASSISTANT TO CHAIRMAN STAFFORD; JOHN KRATZKE, MANAGING DIRECTOR'S OFFICE; JOWL E. BURNS, ASSISTANT MANAGING DIRECTOR, MANAGING DIRECTOR'S OFFICE; ALAN HAIFETZ, ASSISTANT TO CHAIRMAN STAFFORD; LEWIS R. TEEPLE, ACTING DIRECTOR, BUREAU OF OPERATIONS; ROBERT L. OSWALD, SECRETARY, AND MICHAEL STEWART, LEGISLATIVE COUNSEL

Mr. STAFFORD. I have with me today Commissioner O'Neal and Commissioner Corber.

Mr. Moss. Mr. Chairman, in welcoming you I would like to acknowledge the fact that during your service on the Commission it has been my pleasure to work with you and that I have always found you a cooperative person with whom to work.

Mr. STAFFORD. Thank you very much.

Mr. Moss. It is in that spirit that we undertake these hearings.

Mr. STAFFORD. It has always been a pleasure, sir.

This is our summary statement.

I appreciate the opportunity to be here today to participate in your oversight hearings on the subject of regulatory reform and to discuss with you the activities of the Interstate Commerce Commission. During the past year, a great deal of public debate has been focused on the issue of regulatory reform. The Commission thus attempted to

contribute in a positive manner to this public discourse through its legislative positions, and where the need for regulatory change has been shown the Commission has responded to that need by the administrative actions that I have discussed in my prepared statement which has been submitted for the record.

That statement dealt in some detail with the nine issues presented to us for discussion by the subcommittee. Here I would like to summarize the main points made in that statement, emphasizing what is the committee's apparent primary concern—the Commission's compliance program and what the Commission is doing to improve it.

The effectiveness of the Commission's compliance program is a matter of considerable concern to the Commission and all aspects of that program have been under Commission review for several months. As you know, approximately a year ago I appointed a blue ribbon staff study panel to look into all aspects of Commission proceedings. This panel reported to the Commission in the summer of 1975 with more than 60 recommendations for change, most of which have been implemented by the Commission since then.

Because of the concern about compliance, I appointed a successor panel in July 1975 to conduct an in-depth study of the Commission's compliance program. I should emphasize that this was done not because of outside pressure but because the Commission determined that its compliance program needed a hard look. Moreover, the panel was given complete freedom to undertake an entirely independent investigation.

The panel completed its work and filed its report with the Commission in October 1975. In that report, which has been supplied to the subcommittee, the panel found that there were a number of deficiencies in the Commission's compliance program caused primarily by organizational and policy short-comings in the bureaus responsible for that program.

The panel made several recommendations, principal among which are that the Commission's functions in the area of compliance should be reorganized so as to place all compliance functions in a single office; that the compliance program should be redirected, particularly to areas of more economic significance; that policy implementation should be improved through a more coordinated and aggressive program; and that the system by which field staff employees are evaluated for performance and promotion should be revised to emphasize quality rather than quantity.

Upon receipt of the report, the Commission invited the comments of those whose activities are the subject of the report and after receipt of these views I asked the Vice Chairman to review the situation and recommend a course of action to the Commission. Many of the findings and recommendations of the panel have been strongly disputed and the analysis necessary to weigh appropriately all the differing points of view is currently proceeding as expeditiously as possible. I recognize that this should be a matter of the highest priority for the Commission, and I intend to do everything within my power to see that all appropriate changes are made. I am confident that as it did with the recommendations of the first blue ribbon panel, the Commission will fully implement all of the recommended changes that will contribute to more effective regulation.

Turning to the other areas that you have suggested I cover in my testimony, it is difficult to pinpoint one specific Commission action as the most successful; however, I do believe that the Commission has been generally successful in adjusting its regulatory policies to the Nation's changing priorities, while at the same time contributing to the maintenance of a strong transportation system.

Concerning the issue of insufficient resources, we do believe that substantial OMB cutbacks of our requests for funds and positions have had a substantial negative impact on our efforts to pursue effectively ongoing programs, expand existing programs into new areas or enlarge operations to handle higher workload levels. As to the question of public and consumer participation in the regulatory process, the Commission has taken a number of actions to expand public and consumer participation in its regulatory process.

One of the more dramatic recent developments in this regard was the Commission's decision to create an Office of Public Counsel. As established by the Commission, this office has discretion to participate as a party in adjudicatory or rulemaking proceedings before the Commission where it decides that it may be of assistance in determining the public interest and it also has full rights to petition for the institution of proceedings before the Commission.

The Commission has placed increasing reliance on rulemaking proceedings for formulation of Commission policies. These proceedings present an opportunity for full public input and exploration of the issues and quite often produce substantial benefits for the general public. Good examples of these are the Commission's household goods rulemaking proceeding which has produced a comprehensive set of regulations covering almost all phases of the household goods moving process, a proceeding leading to the promulgation of the number of rules to protect consumers who are passengers on intercity railroad service, and a recent rulemaking proceeding involving substantial public participation which led to the issuance of a rule prohibiting smoking on buses except for a section in the rear of the bus which cannot exceed 20 percent of capacity.

The Commission has also been primarily responsible for seeing that the interest of the general public throughout the Northeast is protected during the reorganization process that is taking place under the Rail Reorganization Act of 1973. The Commission's Rail Services Planning Office was responsible for holding hearings throughout the Northeast at which users of rail services could make their views on the reorganization known. Since those hearings, the Office has worked diligently to insure that rail service users throughout the Northeast continue to receive an adequate level of railroad service. The work of the Office has had a substantial effect on the configuration of the final system plan, and the Office continues to work with States and localities for the purpose of facilitating continued rail service.

The Commission also has sought to improve public and consumer participation in agency proceedings by a variety of organizational and procedural changes which have had the effect of increasing consumer access to the Commission. We believe that the success of our efforts in this regard are reflected by the fact that in a recent HEW complaint handling study, this Commission rated near the top of the 14 agencies

studied in terms of the effectiveness of its consumer complaint handling.

Our activities in this area include the creation of a Consumer Information Office and a toll-free hotline for assistance to all consumers; the establishment of special offices to handle consumer complaints in the area of household goods and passenger service; publication of a Consumer Bulletin and issuance of public advisories on many consumer problems within our jurisdiction; establishment of a consumer protection unit in the Bureau of Traffic which digs out those proposed tariff provisions which might have an adverse effect on the consumer through an unannounced or unexpected increase in the cost of service; establishment of positions in the field known as transportation consumer specialists who assist consumers with problems relating to the movement of household goods and are also participating in the compliance efforts of the Commission and the establishment of a position in the Office of Proceedings to provide assistance to members of the public, particularly small businessmen, who are seeking temporary authority to conduct interstate services while their permanent applications are pending.

Another major issue is the question of agency jurisdiction in need of deregulation or revised regulation. This Commission is in perhaps a unique position since it is the subject of a just passed bill, the Railroad Revitalization and Regulatory Reform Act of 1976, which contains major changes in railroad regulation by the ICC. The main challenge facing the Commission during the coming year will be the division of its regulatory standards and practices to conform with the provisions of this bill and to contribute to the achievement of the bill's objective of revitalizing the Nation's railroads.

The rail bill will have a substantial impact on every major aspect of railroad regulation. In sum, it represents a reaffirmation of public need for regulation of the Nation's vital railroad industry, but it also represents a major effort to modernize the statutory framework within which that regulation is conducted.

A major motor carrier deregulation bill, the Motor Carrier Reform Act, has recently been sent to Congress by the Department of Transportation. This bill would deregulate motor carrier entry control and remove effective Commission control over the level of motor carrier rates. The Commission has not yet commented officially on the provisions of this highly complex bill; however, we are convinced that the bill's proposed major regulatory changes are unwarranted and will ultimately work to the disadvantage of surface transportation and our general economic well-being.

The stated rationale of the Department of Transportation for proposing to do away with the present system of motor carrier entry control is that the present system unduly limits competition, thus depriving the public of better motor carrier service. Yet, at approximately the same time that it sent this bill to Congress, the Department issued its "Industrial Shipper Survey," a study of the views of industrial consumers of transportation services, which indicated exactly the opposite.

The survey demonstrated that the vast majority of shippers (84.7 percent) found the present number of motor carriers to be entirely adequate to maintain good service. Moreover, 12.1 percent of these shippers thought that there were too many carriers to maintain good

service, and only 3.2 thought that there were too few carriers. The criterion for measuring the success of the Commission's certification process should be whether it produces a satisfactory level of motor carrier service to the public. Under this criterion, it would appear that the basic system is sound.

Another criterion for determining the appropriate level of regulation is the cost of that regulation as opposed to the benefits derived therefrom. Those advocating deregulation claim that the cost of regulation is too high, but it has become quite apparent that many of these costs claims are contradictory, greatly overstated, and based on little reliable information. Moreover, they give little, if any, mention to the corresponding benefits of regulation. It is undeniable that there are certain costs of regulation, and we constantly balance these costs against the countervailing benefits in reaching our day-to-day decisions. For example, in suspending a new rate, we must consider both the benefit to the public of protection against unreasonably high rates and the cost to the carrier of being deprived of additional revenues.

It should be noted, however, that not all benefits of regulation can be really quantified. For example, it is impossible to quantify all social and economic benefits that a community receives from the maintenance of essential rail or motor carrier service, just as it is impossible to quantify accurately the benefits that the community receives from national defense or environmental regulations.

This is not to say that cost/benefit analysis has no place in determining the appropriate level of regulation. On the contrary, the Commission, through its Bureau of Economics, has been addressing the question of cost/benefit analysis from several perspectives for the purpose of using it to resolve broad issues concerning the overall benefits of regulation and to assist in the resolution of the individual adjudication.

A major concern for the Commission has been the length of time that many of its proceedings take, and because of this concern the Commission has taken a number of steps, both administrative actions and legislative proposals, to improve the situation. We have, for example, instituted a rulemaking proceeding for the adoption of rules that would provide for a significantly altered procedure in filing applications for various types of operating rights authorities, including a requirement that the entire case be submitted with the initial application. A special task force has been established to undertake a comprehensive examination of the Commission's rules of practice, and it is anticipated that their suggested revisions will generally tend to expedite the regulatory process through the deletion or modification of burdensome practices.

Another major procedural reform that has greatly reduced the average amount of time for a Commission case is the greater reliance by the Commission on a procedure whereby many motor carrier application cases are handled by a modified procedure without the need for oral hearing. In these cases, verified written statements are submitted in lieu of oral testimony, and oral hearings are held for the sole purpose of cross-examination and only when material facts are in dispute.

With regard to legislation, one of the major areas that the Commission has focused on is the extent to which the Interstate Com-

merce Act unnecessarily contributes to regulatory delays through time-consuming procedures. The procedural provisions of the Interstate Commerce Act are more extensive than the requirements of the Administrative Procedure Act. Particularly burdensome is section 17 of the act which requires at least two levels of appellate review within the Commission in most cases. We have proposed a modification of this provision which would streamline the review process, and this modification was largely adopted for railroad proceedings in section 303 of the Railroad Revitalization and Regulatory Reform Act.

The Commission has also submitted various other legislative proposals that would allow us to process smaller cases on an informal expedited basis and to exempt from regulation any transportation service when continued regulation appears not to serve any useful public purpose, thus allowing the Commission to commit its resources more efficiently in those regulatory areas that are necessary. All of these activities are having, and will continue to have, the effect of greatly expediting Commission proceedings.

That concludes my summary remarks.

[Testimony resumes on p. 82.]

[Mr. Stafford's written statement and attachments follow:]

STATEMENT OF HON. GEORGE M. STAFFORD, CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. Chairman, Members of the Subcommittee:

I appreciate the opportunity to be here today to participate in your oversight hearings on the subject of regulatory reform and to discuss with you the activities of the Interstate Commerce Commission. During the past year, a great deal of public debate has been focused on the issue of regulatory reform. The Commission has attempted to contribute in a positive manner to this public discourse through its legislative positions, and where the need for a regulatory change has been shown, the Commission has responded to that need by the administrative actions that will be discussed in this statement.

The Commission is in somewhat of a unique position in that the "Railroad Revitalization and Regulatory Reform Act of 1975," a comprehensive railroad bill which contains major changes in railroad regulation, has just been passed by Congress. The Commission worked hard to make a constructive contribution to this legislation, and it realizes that now one of its major challenges will be to administer those provisions of the new Act which fall within its jurisdiction,

so as to achieve the goals of that Act and of the National Transportation Policy, as set forth in the Interstate Commerce Act.

I will turn now to a discussion of the nine issues that the Chairman of the Subcommittee has suggested that I make the focus of my remarks.

(1) Brief Summary of Overall Agency Mission

The Commission's basic mission is spelled out in the National Transportation Policy, which precedes the Interstate Commerce Act (49 U.S.C. preceding sections 1, 301, 901, and 1001) and which mandates the Commission "to promote safe, adequate, economical and efficient service and [to] foster sound economic conditions in transportation and among the several carriers [and] to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices." To carry out this mandate, the Commission is authorized by the several parts of the Act to regulate railroads, express companies, and pipelines except water and gas (part I), motor carriers and brokers (part II), water carriers (part III), and freight forwarders (part IV). The great bulk of the Commission's regulatory efforts is focused on the regulation of railroads and motor carriers.

With regard to railroads, the Commission regulates rates, car service, construction and abandonment of railroad lines, and certain financial transactions. It is the Commission's duty to protect the public against rates that are unreasonably

high or low, unjustly discriminatory, or unduly preferential or prejudicial. The Commission must also determine whether the public convenience and necessity permit the construction or abandonment of railroad lines or operations. Furthermore, the Commission is charged with the duty of approving mergers and similar transactions between rail carriers and the issuance of securities by these carriers.

Commission regulation of motor carriers is very similar, except that a substantial proportion of interstate motor carriers, primarily those engaged in the transportation of livestock and unmanufactured agricultural commodities, are exempt from ICC regulation. It is the Commission's duty to ensure that the rates of motor carriers of passengers or property are reasonable and not unduly discriminatory or preferential. The Commission is also mandated to grant interstate motor common carrier operating certificates to the extent that public convenience and necessity is shown to require the service specified in the certificate. If no such showing is made, the Commission is required to deny the certificate application. The Commission also regulates motor carrier mergers and securities issuances.

(2) Public Protection Mission

Simply put, the Commission's public protection mission is to ensure that all shippers and communities--large and small, urban and rural--have available to them an adequate level of transportation service offered at reasonable,

nondiscriminatory rates. Moreover, the maintenance of this system must be consistent with other major national goals such as energy conservation and environmental protection. Ultimately, the success or failure of the Commission must be judged on how well it fulfills this mission.

It is difficult to pinpoint one specific Commission action as the "most successful"; however, I do believe that the Commission has been generally successful in adjusting its regulatory policies to the Nation's changing priorities, while at the same time contributing to the maintenance of a strong transportation system. A number of items are reflective of this assessment. For example:

1. I appointed a Blue Ribbon Staff Study Panel to do an in-depth study of the Commission's procedures and substantive policies and to make critical recommendations for improving these procedures and modernizing our substantive rules.

The Panel reported to the Commission with a total of more than 60 recommendations calling for internal, procedural and substantive changes. As the materials that we have already supplied to the Subcommittee indicate, many of the Panel's recommendations have been implemented and others are nearing full implementation. Some of the more significant recommendations include:

a. The recommendation that the Commission impose time limits on all internal phases of case processing. This recommendation has been approved by the Commission and is in the process of being implemented. These limits will be monitored by a new computer system for case control information.

b. A proposed rulemaking, instituted on October 6, 1975, provides for a significantly altered procedure in filing applications for various types of operating authority, including a requirement that the entire case-in-chief be submitted with the initial application. Public comments on the proposed rule are due later this month.

c. A special task force has been established to undertake a comprehensive examination of the rules of practice of the Commission for the purpose of streamlining and modernizing these rules.

d. Similarly, the Commission is moving, by means of a proposed rulemaking, to limit the number of pages in petitions for reconsideration of initial decisions or reports of Administrative Law Judges or Review Boards.

e. The Panel recommended a greater degree of economic analysis in the Commission's decision-making process. The Bureau of Economics has recently been reorganized, and a greater reliance on economic analysis is occurring in a wide variety of cases.

f. The Commission has instituted a proposal to expand commercial zones and terminal areas within which transportation can be conducted without ICC authority.

These are just a sampling of the many Blue Ribbon proposals that the Commission has considered and acted upon in the last few months. Taken as a whole, the institution of this completely independent study and the implementation of many of the Panel's recommendations represents a major Commission effort to modernize its rules and procedures.

2. In light of the Nation's need to conserve fuel, the Commission has moved recently in its Gateway Elimination proceeding, to eliminate the circuitous routing followed

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by irregular route motor common carriers through gateway points. The Environmental Protection Agency has estimated that the elimination of these gateways will save up to 300 million gallons of fuel annually.

Furthermore, because of the substantial controversy that has arisen over the extent to which regulation contributes to the empty mileage of motor carriers and the general lack of reliable information on this subject, the Commission has instituted a nationwide survey for the purpose of obtaining accurate data on the amount of such activity and its causes. The results of this survey will help the Commission to take whatever regulatory action is needed to reduce empty backhauls.

Another regulatory response to the energy crisis occurred in reaction to the nationwide truck strike by independent owner-operators who, in the winter of 1973-74, were overwhelmed by escalating fuel costs. The Commission's authorization of a 6 percent surcharge and its attendant requirements that this surcharge collected by the regulated common carriers be passed through to the owner-operators who paid for the fuel,were primarily responsible for the ending of the strike and for the prevention of a recurrence.

3. In the past several years, the Commission has taken numerous steps to ensure that the average consumer is as fully protected as possible by Commission actions. As discussed more completely in the response to issue No. 3, the Commission has taken substantial steps to protect the consumer in virtually every area where its regulatory

authority affects the average consumer directly. Moreover, to the extent that the term "consumer" is extended to include the shippers of freight that regularly use transportation services, as opposed to the man in the street, and Commission has also taken many steps recently to ensure that this type of consumer receives a satisfactory level of service from the carriers that serve him.

Going to the other end of the spectrum, the oldest current case before the Commission is the Rock Island-Union Pacific merger proceeding, and we would also have to say this ranks as the Commission's least productive case. However, some valuable lessons have been learned from it which, we believe, will prevent a repetition. This proceeding, which has been among the most complex in the Commission's history, is presently open for comments of the parties on whether or not they still desire to acquire various portions of the Rock Island in view of recent developments. A chronological description of these proceedings is attached hereto as Appendix A.

The main reason that this case is so complex is that it involves the basic structure of the railroad industry in the western half of the United States. The Commission has had to arrive at an arrangement which maintains and improves the Rock Island's present service to the public, but which is structured so as to provide other competitive railroads in the region a better opportunity to remain competitive.

The complexities of this case are illustrated by the fact that it required over 280 days of oral hearings and involved a record of testimony and exhibits of over 150,000 pages. The Administrative Law Judge, in February 1973, issued a massive 3-volume report recommending a major restructuring of the railroads in the West into basically four strong rail systems. The Commission's report, which itself runs to more than 300 pages, differs substantially from the recommendations of the ALJ. The Commission essentially approved the merger of the Rock Island into the Union Pacific subject to a number of conditions, including sale of portions of the Rock Island to several other railroads, which were intended to protect members of the public who otherwise would be adversely affected by the merger.

We recognize that this case has taken entirely too long, but it also has been a primary factor in getting us to focus our concern on the problem of regulatory lag. This concern has led to a wide variety of administrative actions and legislative proposals which have had, and are continuing to have, the effect of reducing the regulatory lag problem. These actions will be described in more detail in the discussion of issue No. 8.

Turning to the issue of whether or not there is an imbalance between the regulated industry and public interests in agency proceedings, it is impossible to generalize on this point. Certainly, in many Commission proceedings, the public's interest is well represented. For example, members of the public, quite often and quite effectively, oppose railroad rate changes, abandonment proposals, and merger plans. Similarly, members of the shipping public in need of better motor carrier service regularly support, and are instrumental in the granting of additional motor carrier authority. Furthermore, the Commission is turning more and more to rulemaking proceedings for the resolution of major public issues, and quite often, these proceedings, such as the recent cases involving limitations on smoking on buses and the adequacy of Amtrak service, provide a forum for a broad spectrum of public views.

On the other hand, the Commission is concerned that there may be cases where, because of unfamiliarity with Commission processes or for other reasons, members of the public do not have a satisfactory opportunity to present their views to the Commission or where there is an overall public interest or source of information which is not being presented or represented by any of the opposing parties in a given case. It is the Commission's concern for this potential problem which has led to its establishment of an Office of Public Counsel and to a number of other actions designed to simplify the agency's processes and make them more accessible to the general public.

Concerning the issue of the adequacy of the Commission's regulatory powers to meet its public protection mission, we have presented to this Congress and for previous Congresses, a variety of legislative proposals that we believe would improve our capability to ensure that the public has access to a strong, responsive transportation system. These include:

(1) Commission supervision of the activities of nontransportation conglomerates that control regulated transportation companies, and particularly the transactions between the two. The trend toward conglomerates in the last several decades has reached the point where railroads controlled by conglomerate holding companies now account for approximately two-thirds of total industry revenues in ton-miles. This trend has had disastrous consequences for the surface transportation industry in that there has been a substantial drain of resources from transportation companies to non-transportation conglomerate parents, which has substantially weakened many transportation companies. The Commission has insufficient regulatory tools to prevent this drainage, and its proposal has been put forth for the purpose of remedying this defect.

(2) Jurisdiction to prescribe through routes and joint rates among motor carriers and between motor carriers and other modes of surface transportation. Such jurisdiction would help the Commission to promote energy saving piggyback operations and to maintain an adequate level of service to smaller shippers in remote geographical areas.

(3) A proposal to allow the Commission to exempt presently regulated services from regulation when continued regulation does not appear to be in the public interest.

(4) A provision that would enable the Commission to obtain carrier financial forecasts, thus allowing the Commission to predicate its regulatory decisions on a greater degree of economic planning.

(5) A variety of proposals that would enhance the Commission's enforcement authority, including the provision of civil forfeiture remedies against railroads in concession and rebate cases and the broadening of the Commission's injunctive powers under part I of the Act (dealing with railroads and pipelines) and of the civil forfeiture provisions of all parts of the Act to include all violations of the Act or rules and regulations thereunder.

As to the issue of insufficient resources, we do believe that funding at a significantly lower level than is necessary for the Commission to meet its statutory responsibility has meant that some problem areas are not being attacked as fully or as quickly as the Commission would like. In four of the past five years, the Office of Management and Budget (OMB) cut the Commission's requests for funds submitted to Congress by $4-6 million, and the eventual appropriation generally reflected that reduction. A growing resources concern is also OMB's tendency to effect the Commission's program priorities. For instance, it recently supported funding an "Office of Public Counsel" only at the expense of our compliance program.

Moreover, OMB staffing curtailments have a negative impact upon the Commission's mission. In Fiscal Years 1971 and 1972, OMB prohibited the Commission from filling 140 additional positions authorized by the Congress. These actions, although not eliminating or curtailing ongoing programs, severely limited the Commission's ability to cope adequately with increased work load demands. During Fiscal Years 1973 through 1975, OMB did permit moderate staffing increases. However, these increases were significantly below that which the Commission believed to be essential in order to pursue effectively ongoing programs, expand existing programs into new areas, or enlarge operations to handle higher work load levels. These actions have:

- Impeded progress toward the reduction of case backlogs, while faced with increasing work loads.
- Hindered the initiation and aggressive pursuit of comprehensive investigation and rulemaking proceedings of vital interest to carriers and the public alike.

- Limited the Commission's flexibility to cope with changes in legislation and court decisions.
- Reduced the Commission's capability to monitor the adequacy of Amtrak passenger service.
- Limited the number of compliance surveys and motor/rail investigations conducted.
- Reduced the Commission's ability to respond rapidly to consumer complaints.
- Delayed the implementation of the rail and motor carrier early warning systems.
- Limited expansion of the Commission's audit program during a time marked by an alarming increase in carrier bankruptcies.
- Delayed implementation of the consumer-oriented tariff review program.

(3) Adequacy of Public and Consumer Participation in the Regulatory Process

The Commission is continuing to seek ways to expand public and consumer participation in its regulatory process. One of the more dramatic recent developments in this regard was the Commission's decision announced on October 31, 1975, to create an Office of Public Counsel.

participate as a party in adjudicatory or rulemaking proceedings before the Commission where it decides that it may be of assistance in determining the public interest. "Public interest," in this context, would clearly embrace the full social, economic and governmental impact of Commission decisions. Also, the Commission, on its own initiative, may direct participation of the Public Counsel as a party. The Public Counsel is afforded all the rights of parties and may intervene in,or petition for the institution of,proceedings before the Commission at such times and in such manner as is appropriate under the Commission's rules.

The Fiscal Year 1977 budget request for the Office of Public Counsel provides for initial staffing of 15 positions and $958,000, a large portion of which would be used to contract with experts and consultants to assist in developing and presenting evidence in the public interest. As you know, the new rail bill creates an Office of Rail Public Counsel in the Commission. Obviously, it will be necessary for the Commission to coordinate and consolidate this legislatively created Office with the Office of Public Counsel administratively established by the Commission last Fall. However, in view of the OMB's attitude previously referred to, there is a real danger that this needed function will develop at the expense of other Commission duties and responsibilities.

Also of great significance is the Commission's increasing reliance on rulemaking proceedings for formulation of Commission policies. These proceedings present an opportunity for full public input and exploration of the issues and quite often produce substantial benefits for the general public. For example:

a. In Ex Parte No. MC-19 (Sub-No. 8), the Commission issued a comprehensive set of regulations covering almost all phases of the household goods moving process. Among other requirements, these regulations imposed on the carrier the obligation to furnish each household shipper an information booklet prepared by the Commission's staff explaining the details of a household goods shipment transaction. Since 1972, a Commission member has been delegated the supervision over problems relating to household goods matters, thus assuring day-to-day oversight over this important area of consumer protection. Additional public advisories have been furnished, regulations have been tightened as needed to protect consumers, and carriers now are required to provide prospective customers with reports outlining their past performance. Requirements under this program have been strictly enforced, and suspensions of operating authorities have resulted from noncompliance. This program has been successful in maintaining a responsible level of service in an industry vital to our mobile society.

b. The Commission has promulgated a number of rules for the protection of consumers who are passengers on intercity railroad service. Recently, in Ex Parte No. 277 (Sub-No. 3), Adequacy of Intercity Rail Passenger Service, a rulemaking proceeding held to determine

whether the Commission should prescribe additional regulation, recommend legislation, or take other action in the public interest, a series of field hearings were held around the country so that individual rail passengers could express their views on the quality of rail service. These hearings were beneficial both to the Commission and to Amtrak in that they gave a clear indication of how the public regards rail passenger service and where improvements need to be made.

c. The Commission has taken similar action with regard to bus passenger service. After a recent rulemaking proceeding involving substantial public participation, the Commission issued rules prohibiting smoking on buses except for a section in the rear of the bus which cannot exceed 20 percent of capacity. Moreover, the Commission is now involved in a broad investigation of the quality of bus passenger service similar in scope to the investigation of rail passenger service.

d. The Commission has also taken a number of actions to protect a specific type of consumer--the small or geographically isolated shipper of freight whose traffic is not attractive enough to ensure an adequate level of transportation service. In a rulemaking proceeding, the Commission prohibited motor carriers from building restrictions into their tariffs that would have had the

effect of embargoing small shipments or ceasing to serve rural communities. The Commission has recently instituted a new proceeding, Ex Parte No. MC-98, New Procedures in Motor Carrier Restructuring Proceedings, which involves the solicitation of views from the general public on the question of whether the rate structure on small or less-than-truckload shipments should be revised to improve the quality of service to small shippers.

The Commission has also been primarily responsible for seeing that the interest of the general public throughout the Northeast is protected during the reorganization process that is taking place under the Railroad Reorganization Act of 1973. The Commission's Rail Services Planning Office was responsible for holding hearings throughout the Northeast at which users of rail services could make their views on the reorganization known. Since those hearings, the Office has worked diligently to ensure that rail service users throughout the Northeast continue to receive an adequate level of railroad service. The work of the Office has had a substantial effect on the configuration of the Final System Plan, and the Office continues to work with States and localities for the purpose of facilitating continued rail service. A complete description of the unique contribution of this Office is attached hereto as Appendix B.

The Commission also has sought to improve public and consumer participation in agency proceedings by a variety of organizational and procedural changes which have had the effect of increasing consumer access to the Commission. These include:

a. The creation of a Consumer Information Office as an adjunct to the Public Information Office and the establishment within this new office of a toll-free hot line which provides ready access to immediate Commission assistance for every consumer in the 48-State network covered by this telephone service.

b. The establishment of a Household Goods Branch in the Section of Motor Carriers and a Passenger Service Branch in the Section of Railroads both of which are concerned with the handling of consumer complaints concerning the adequacy of the respective transportation service.

c. Publication on a regular basis of a Consumer Bulletin which apprises consumer offices and organizations throughout the Nation of relevant Commission actions, and issuance of public advisories on many consumer problems, most notably, small shippers' rights and remedies and movement of household goods.

d. The establishment of a consumer protection unit in the Bureau of Traffic, which is charged with the responsibility for ascertaining those proposed tariff provisions which might have an adverse effect on the consumer through an unannounced or unexpected increase in the cost of the service provided under the tariff.

This program is operated specifically for the benefit of consumers who are not equipped to watch tariff publications so as to be able to protest changes that are adverse to their interests. It should be noted that this program could be in some jeopardy under the 'Rail Revitalization and Regulatory Reform Act of 1975' because of limitations it places on the Commission's power to suspend on its own motion. Any comparable motor carrier rate provisions would have an even greater negative effect should similar legislation affecting motor carriers become law.

e. The establishment of several positions in the Bureau of Operations, Field Staff, designated as Transportation Consumer Specialists. These highly qualified individuals have assisted consumers with problems relating to the movement of household goods and are also participating in the compliance efforts of the Commission. This program has been highly successful and the Commission is endeavoring to expand this area of its consumer protection.

f. The establishment of an ombudsman in the Office of Proceedings whose function is to provide information and assistance to members of the public, particularly small businessmen, who are seeking temporary authority to conduct interstate transportation services while their permanent applications are pending.

g. Actions to simplify and to expedite Commission procedures, such as the appointment of a high-level staff panel to simplify the Commission's Rules of Practice, the formulation of legislative proposals to remove unnecessary procedural requirements contained in the statute, and the

reduction of the number of pleadings that must be filed in Commission cases. These actions are all designed to make the Commission's procedures more manageable for members of the general public.

We believe that our efforts to improve consumer access to the Commission have been quite successful. This Commission, along with 14 other Federal agencies, is the subject of a multi-phase consumer complaint handling study by the Office of Consumer Affairs of HEW. In phase one of the evaluation, OCA's private consultants, selected on a competitive-bidding basis, rated this Commission near the top in the effectiveness of its consumer complaint handling, finding that of the 24 functions studied, the ICC rated excellent in 10 functions, satisfactory in 11, and unsatisfactory in only 3. Although these three problem areas were minor in relation to our overall complaint handling procedure, they have all been corrected. A chart indicating the overall results of this study is attached hereto as Appendix C.

In general, we believe that consumer representation at the Commission has improved over the last several years; however, we are continuing our efforts to improve public access to the Commission in every way feasible.

(4) Agency Jurisdiction in Need of Deregulation or Revised Regulation

This Commission is in perhaps a unique position among the agencies being studied by the Subcommittee since it is the subject of a just-passed bill, the Railroad Revitalization and Regulatory Reform Act of 1975, which contains major changes in railroad regulation by the ICC. The main challenge facing the Commission during the coming year will be the revision of its regulatory standards and practices to conform with the provisions of this bill and to contribute to the achievement of the bill's objective of revitalizing the Nation's railroads.

The rail bill will have a substantial impact on every major aspect of railroad regulation. In sum, it represents a reaffirmation of the public need for regulation of the Nation's vital railroad industry, but it also represents a major effort to modernize the statutory framework within which that regulation is conducted. Among its major provisions are ones that limit the regulation of the level of railroad rates to areas where a carrier possesses "market dominance," while fully retaining the Commission's authority to strike down unjustly discriminatory or preferential rates; that revise Commission procedures by eliminating required duplication of appellate review within the agency and by imposing deadlines on Commission decision-making; that expand the Government's role in railroad restructuring by providing for more planning of ways in which restructuring can improve railroad efficiency and by expediting Governmental consideration of railroad merger proposals; and that address the problem of loss of rail service through railroad abandonments by establishing a coordinated subsidy program which gives users of rail service an opportunity to maintain operations over lines that railroads want to abandon due to a lack of profitability.

A major motor carrier deregulation bill, the Motor Carrier Reform Act, has recently been sent to Congress by the Department of Transportation. This bill would deregulate motor carrier entry control and remove effective Commission control over the level of motor carrier rates. The Commission has not yet commented officially on the provisions of this highly complex bill;

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however, we are convinced that the bill's proposed major regulatory changes are unwarranted, and will ultimately work to the disadvantage of surface transportation and our general economic well-being.

The stated rationale of the Department of Transportation for proposing to do away with the present system of motor carrier entry control is that the present system unduly limits competition, thus depriving the public of better motor carrier service. Yet, at approximately the same time that it sent this bill to Congress, the Department issued its Industrial Shipper Survey, a study of the views of industrial consumers of transportation services, which indicated exactly the opposite. The survey demonstrated that the vast majority of shippers (84.7 percent) found the present number of motor carriers to be entirely adequate to maintain good service. Moreover, 12.1 percent of these shippers thought that there were too many carriers to maintain good service and only 3.2 percent thought that there were too few carriers. Thus, even among those few shippers that were dissatisfied with the present number of motor carriers, almost four times as many of these shippers thought that there were too many carriers, rather than too few. The criterion for measuring the success of the Commission's certification process should be whether it produces a satisfactory level of motor carrier service to the public. Under this criterion, it would appear that the basic system is sound.

Another criterion for determining the appropriate level of regulation is the cost of that regulation as opposed to the benefits derived therefrom. Those advocating deregulation claim that the cost of regulation is too high, but it has become quite apparent that many of these cost claims are contradictory, greatly overstated and based on little reliable information. Indeed, one economist advocating deregulation recently admitted that he was "painfully aware that these estimates may be well off the mark; that they result from several largely phony estimates based upon questionable techniques and assumptions".[1]

Furthermore, these "cost of regulation" statistics are highlighted with very little, if any, mention given of the countervailing benefits of regulation.

It is undeniable that there are certain costs of regulation, and we constantly balance these costs against the countervailing benefits in reaching our day-to-day decisions. For example, in suspending a new rate, we must consider both the benefit to the public of protection against unreasonably high rates and the cost to the carrier of being deprived of additional revenues. Or in railroad abandonment cases we must weigh the benefits derived by a community from continued rail service against the possible costs to the carrier of continuing that service.

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[1] Economic Consequences of Motor Carrier Regulation, George W. Wilson, Indiana University, at p. 21.

It should be noted, however, that the benefits of regulatory protection are often not readily quantifiable. For example, it is impossible to quantify the social and economic benefits that a community receives from the maintenance of essential rail or motor carrier service just as it is impossible to quantify accurately the benefits that the community receives from national defense or environmental regulations. But it cannot be questioned that protection against arbitrary discontinuance of rail or motor carrier service is essential to many communities.

This is not to say that cost/benefit analysis has no place in determining the appropriate level of regulation. On the contrary, the Commission, through its Bureau of Economics, has been addressing the question of cost/benefit analysis from several perspectives for the purpose of using it to resolve broad issues concerning the overall benefits of regulation and to assist in the resolution of individual adjudications.

The Bureau has prepared an assessment of the technique of cost/benefit analysis. Secondly, an evaluation of cost/benefit analysis as applicable to the Commission's mission was developed. A third project evaluated the use of cost/benefit analysis structure to abandonment case processing. In this project, the checklist approach developed holds out the promise of

structuring evidence in such a way that parties to a case may efficiently address the evidentiary needs of the case and the decision-maker may efficiently evaluate the major and minor factors involved through quantitative evaluation. Other ongoing projects include a broad evaluation of the costs and benefits of regulation, and an evaluation of the question of entry in the motor carrier operating rights area from the standpoint of (1) a checklist (similar to that developed in the rail abandonment test project), and (2) a regulatory approach to the operating rights concept.

Finally, I should note that this entire statement reflects the Commission's varied efforts to revise its regulation to conform to the changes in national priorities while seeking to maintain a strong surface transportation system. We will continue both these administrative and legislative efforts. Particularly pertinent here is the legislative proposal that the Commission has presented several times, which would allow the Commission to exempt services from regulation when continued regulation would not be in the public interest. The rail bill includes this provision for railroads only. Thus, with regard to railroads, the Commission now will have the authority both to exempt from regulation if appropriate and to reimpose regulatory controls when necessary.

(5) Commission Compliance and Enforcement Information for Fiscal Years 1975

While the primary responsibility for the Commission's compliance and enforcement programs rests with the Bureau of Operations and the Bureau of Enforcement, compliance is essentially a Commission-wide effort and entails the services of such diverse offices as the Bureaus of Accounts and Traffic, as well as the endeavors of the Commission members themselves. The field and headquarters staffs of the Bureau of Operations are responsible for investigating the activities of regulated carriers for compliance with the provisions of the Interstate Commerce Act and the regulations of the Commission. They also respond to complaints concerning violations of these regulations and inadequate service generally. To illustrate the dimensions of the compliance program, the following is a numerical breakdown and brief description of the compliance functions performed by the Bureau of Operations during Fiscal Year 1975:

1. 2100 compliance surveys of motor and water carriers and forwarders consisting of on-site examination of carrier records and practices to determine their overall general and rate compliance;
2. 350 railroad compliance surveys which entail a staff examination of rail carriers' records and a review of their practices to determine compliance with the Interstate Commerce Act and related regulations;
3. 3800 railroad agency and yard checks which involve an examination of carrier records and review of operational practices at specific agencies or yards of a railroad;

4. 320 piggyback checks, consisting of the examination of records and review of practices at the railroads' various piggyback trailer facilities to determine compliance with the tariff provisions for detention charges and the marrying (uniting) of trailers for movement;

5. 2300 enforcement investigations requiring (a) a detailed examination of the records and review of the practices of the various entities in the transportation industry, and (b) documentation of violations of the law or regulation. These investigations, which are frequently the culmination of the above-listed surveys and checks, may result in enforcement action against the violator by injunction, criminal penalties, civil forfeitures, and contempt citations as well as actions before the Commission; and

6. processing of approximately 43,000 complaints--such as car shortages, loss and damage, small shipments, household goods and other carrier service deficiencies--and the action necessary to resolve the matter.

The investigatory activities of the Bureau of Operations cover all aspects of Commission regulation. The most common problem areas addressed by Bureau personnel include the receipt and resolution of consumer complaints especially in the areas of household goods carriage and rail passenger service; complaints about small shipment service; all types of inadequate surface transportation service; unauthorized transportation; inadequate railroad car service and violations of Commission car service orders; insurance violations; and other problem areas, particularly those that affect the small or occasional shipper who has neither the expertise nor the influence to get satisfactory service.

The Commission's staff works to resolve administratively the less significant carrier deficiencies revealed by investigation or complaint, thus maximizing its limited manpower. At the same time, the

willful granting of concessions or rebates by the carriers or substantial disregard for the Commission's rules, which results in unfair or inadequate treatment of shippers, are pursued by complete investigation and enforcement.

Turning to the Commission's enforcement program, the following statistical summary reflects the extent of the Commission's enforcement effort in Fiscal Year 1975:

	Rail	Motor	Other	Total
Informal field investigations:				
On hand beginning of year	98	126	0	224
Received during year	69	988	19	1,076
Concluded during year	102	914	8	1,024
Pending at end of year	65	200	11	276

These informal field investigations form the bases for the formal proceedings, either undertaken by the Commission, or referred to the Department of Justice. Such investigations are precipitated in a variety of ways: (1) through routine compliance checks by the supervisor of the district office (frequency of checks depends on the size of the carrier), (2) through public complaints made directly to the field staff, (3) through Congressional sources, (4) through reports issued by Administrative Law Judges in other proceedings, or (5) for some special reason, such as monitoring of regional or national levels of compliance by the Commission.

A significant number of these informal field investigations result in formal court proceedings every year. Figures for Fiscal Year 1975 are:

	Rail	Motor	Other	Total
Court proceedings:				
On hand beginning of year	54	407	4	465
Commenced during year	56	611	2	669
Concluded during year	* 54	** 579	2	635
Pending at end of year	56	439	4	499

* - Includes 34 civil claims cases.
** - Includes 319 civil claims cases resulting in 334 separate settlements.

Pursuant to section 12(1) of the Interstate Commerce Act, the Commission makes referrals to the Department of Justice for the filing of criminal prosecutions, suits for forfeitures, and certain civil injunctive suits. The number of cases so handled by the Department of Justice and fines or penalties assessed in Fiscal Year 1975 are:

	Total Dollar Amount	Average Dollar/Per Sanction
Criminal: 70	191,200	2,731
Civil Forfeiture - Court: 4	15,250	3,813

The total number of court proceedings summarized above also includes the cases brought in the ICC's own name, for mandatory or prohibiting injunctive relief, under the several enabling sections of the Act: section 1(20) (unauthorized construction, operation or abandonment of rail lines); section 5(8) (unauthorized

acquisition of control of a carrier, or failure to comply with an ICC order affecting control); section 12(2) (disobeyance of ICC subpoena issued under part I of the Act); and sections 222(b)(1), 316(b), and 417(b)(1), relating to unauthorized operations, or violations of ICC rules, regulations, or orders under parts II (motor carrier and brokers), III (water carriers), and IV (freight forwarders), respectively. In fiscal year 1975, the Commission was successful in court in obtaining 93 of the 98 civil injunctive decrees sought.

The Director of the Bureau of Enforcement is authorized, within the framework of the Federal Claims Collection Act of 1966, to settle enforcement claims arising under the civil penalty or forfeiture provisions of the Interstate Commerce Act, the Elkins Act, and other amendatory and supplemental legislation. Statistical data for Fiscal Year 1975 are:

	Rail	Motor	Other	Total
Civil claims settlements:				
On hand beginning of year	28	383	N/A	411
Commenced during year	36	385	N/A	421
Concluded during year	34	334	N/A	* 368
Pending at end of year	20	434	N/A	454

* 368 settlements for $1,528,733 equals average dollars per sanction of $4,154.

Civil claims settlements, when added to the fines, forfeitures, or penalties imposed in suits brought by the Department of Justice or by the Commission, equal the total monetary sanctions brought against rail, motor, water and freight forwarder entities in fiscal year 1975:

	Rail	Motor, water and forwarder	Total
Cases concluded in court	20	247	267
Amount imposed	$116,000	$90,450	$206,450
Civil Claims settlements	34	334	368
Amount imposed	$886,878	$641,855	$1,528,733
Total fines and forfeitures	54	581	635
Total amount imposed	$1,002,878	$732,305	$1,735,183

The Commission's investigatory and enforcement activities are performed, respectively, by the Bureaus of Operations and Enforcement. Operations' expenditures for directly related enforcement activities in FY-1975 are estimated at $1,407,114. Enforcement's total budget cost is $1,634,818 for that year.

The Commission also issues cease and desist orders as a result of formal investigatory proceedings. In fiscal year 1975, the Bureau of Enforcement recommended the institution of 64 formal proceedings leading to cease and desist orders.

Formal proceedings within the Commission also seek to guarantee compliance with applicable rules and regulations. The Bureau of Enforcement, therefore, participates in all formal rulemaking proceedings, fitness proceedings, application proceedings, etc., to the extent that it is necessary to gain compliance, to make a record, or to offer a solution for the Commission's consideration. Formal proceedings for Fiscal Year 1975 in which the Bureau participated are:

	Rail	Motor	Other	Total
Formal Commission proceedings:				
On hand beginning of year	17	173	6	196
Commenced during year	5	91	0	96
Concluded during year	3	97	4	104
Pending at end of year	19	167	2	188

The effectiveness of the Commission's compliance program is a matter of considerable concern to the Commission, and all aspects of that program have been under Commission review for several months. Reflecting this concern, the Chairman, upon the filing of the report and recommendations of the Blue Ribbon Panel, which generally dealt with the Office of Proceedings, appointed a new study panel to look into all phases of the compliance program. The new panel was given complete freedom to undertake an entirely independent investigation. It started its work in July 1975, and filed its report with the Commission in October. In this report, which has been supplied to the Subcommittee, the panel found that there were a number of deficiencies in the Commission's compliance program caused primarily by organizational and policy shortcomings in the Bureaus responsible for that program. The panel made eight principal recommendations for strengthening the program, including:

(1) The Commission's functions in the area of compliance should be reorganized so as to place all compliance functions in a single office.

(2) The Commission's compliance program should be redirected, particularly to areas of more economic significance.

(3) Policy implementation should be improved through a more coordinated and agressive program.

(4) A review of the efficacy of alternative enforcement procedures should be conducted.

(5) The system by which field staff employees are evaluated for performance and promotion should be revised to emphasize quality rather than quantity.

(6) A comprehensive training program should be developed and implemented.

(7) The use of para-professional and part-time employees should be expanded.

(8) A public information program, tailored to field office use, should be established.

Upon receipt of the report, the Commission invited the comments of those whose activities are the subject of the report - the Bureaus of Enforcement and Operations and, to a lesser extent, the Bureau of Accounts. After receipt of their views and those of the Managing Director, I asked the Vice Chairman to review the situation and recommend a course of action to the Commission. Many of the findings and recommendations of the Panel have been strongly disputed. Additionally, an organizational change often can result in merely shifting problems and be too oriented to procedures rather than dealing with the substance of the problems identified. The analysis necessary to weigh appropriately all the differing points of view is currently proceeding as expeditiously as possible.

6) What Are Your Agency's Measures of Effectiveness for This Fiscal Year?

The Commission's Program Evaluation System and Central Status System are two measures of effectiveness utilized by the Commission for this fiscal year and for prior fiscal years.

One of the major objectives of the Program Evaluation System is to insure that the Commission's resources are being applied in the most effective and efficient manner in carrying out assigned responsibilities. At the beginning of each fiscal year, major organizational units are given guidelines upon which to base the establishment of their program objectives. The performance of each major program area is monitored on a continual basis and, through a formal reporting system, program accomplishments are measured and evaluated in relation to the established objectives. The Program Evaluation System is designed to identify and enable the taking of corrective action in problem areas, such as low production, duplication of effort, inefficient operations and excessive backlogs.

The Commission's Central Status System provides the means for the analysis and control of the Commission's formal case docket. Under this System, each active case on the Commission's docket is controlled from the date of filing to final decision, including its exact processing stage and the date it reached that stage and preceding stages. Through the control devices incorporated in this System, the age of any specific docket, series of dockets, or the entire docket

can be determined. In addition, we can determine how long a specific case has been at a particular processing stage and, by applying preprogrammed quality (elapsed time) criteria, can identify and print out any case for the review of management. Also, through statistical comparisons of elapsed processing times with prior periods, we are aware, at all times, of the actual condition of our docket of formal proceedings case, both from a quality standpoint and a quantity standpoint.

(7) What is Your Agency Doing to Increase Productivity in Regulated Industry in This Year?

The Commission recognizes that it is essential for it to use its regulatory powers to increase productivity in the regulated transportation industry. Indicative of this is the Productivity Measurement Conference that the Commission held on November 26, 1974. This conference brought together leading students and practitioners of the productivity concept from a broad cross-section of backgrounds, including those from academia, consultants, carriers, shippers, government, and labor. They presented a wide diversity of views and measurement tools which could be useful in obtaining productivity objectives. The edited transcript of that conference was printed and made available to the conferees and the general public early in 1975.

It is clear from the Conference that there are no magic formulas for increasing productivity. Indeed, productivity takes many forms and those forms may be in conflict with the objectives of two opposing parties seeking to increase their productivity. However, the Commission learned a great deal from this Conference and it has helped to provide the Commission with a focus on areas where productivity measurement can be found useful. For example, certain measurement objectives are under consideration in the setting of evidentiary requirements for rail carriers to address in general increase proceedings. Similarly, the information derived from the Conference has also been useful to Commission evaluation in discerning productivity efforts in the motor carrier field, principally in general increase proceedings.

The Commission's concern with industry productivity has been manifested in a number of other actions. Since the advent of the energy crisis in 1973, the Commission has placed special emphasis in its actions on the need to conserve fuel and thereby increase energy productivity.

For example, in the present fiscal year, the Commission granted special permission authority to six motor carrier rate bureaus for the purpose of establishing tariff provisions implementing the substitution of one motor common carrier's service for that of another. Substitution of service occurs when the tractor of one motor carrier pulls the trailer of another motor carrier. The result

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is to reduce the number of miles traveled without payloads, thereby creating more efficient utilization of vehicle and driver.

Moreover, the Commission now requires that applicants for motor carrier operating authority present evidence, consisting of an Operational Feasibility Statement, including evidence as to how their equipment is expected to be returned to an origin point, and if empty vehicle movements will result from a grant of the application, the extent of such empty operations, and where they will occur. With this information, the Commission gives full consideration to the question of balanced operations whenever relevant, and in a number of cases, we have granted authority primarily to balance applicant's operations. We have also given special consideration in rate cases to rates that would tend to reduce empty mileage.

Several other Commission actions having an impact on energy productivity are the aforementioned Gateway Elimination proceedings, which have reduced circuitous routing, and the backhaul study, which should help to obtain reliable data on the extent and causes of motor carrier empty mileage. On the legislative front, the Commission has submitted four proposals intended to encourage a more energy-efficient surface transportation system, including proposals to establish expedited procedures for the approval of smaller pooling arrangements; to provide the flexibility to require fuel cost increase pass-throughs to owner-operators in an energy emergency; to foster energy-saving joint rates and through routes; and to allow freight forwarder-railroad contract rates, thus encouraging full carload rail traffic.

The Commission is authorized under section 5(1) of the Interstate Commerce Act to approve the division of traffic between carriers where such division will be in the interest of better service to the public, or economy in operation, and will not unduly restrain competition. In the current fiscal year the Commission has continued to approve division of traffic agreements with the result that carriers are experiencing increased vehicle payloads at lower costs.

In Ex Parte No. 270 (Sub-No. 2), the Commission is investigating shipper complaints about poor service such as delays in transit, bunching, and car shortages, and is developing appropriate actions to overcome these deficiencies. This should result in increased productivity through better service to railroad patrons.

Finally, with regard to long range productivity, the Commission is studying the expected impact of forecasted economic factors upon individual railroads and rail systems through adaptation and application of forecasting techniques developed and maintained by Data Resources, Inc. Included is an estimate of the probable revenue needs and a conversion of those needs into various projections including measurements of revenue shortfall. The studies are providing new insight into the effect of inflation on traditional rate of return measurement standards. Initial efforts indicate that the method can be used to gain similar insights into the motor carrier industry. The objective is to develop an assessment of the

individual carrier environment and its relationship to the overall economy of the transportation industry. Long-range studies also are underway to provide projections of the economic environment and its affect on rail carriers for periods into the 1980's.

The Commission has also been quite active in the Freight Car Utilization Research-Demonstration Program sponsored by the Association of American Railroads, the Department of Transportation, the railroads and their customers. This program is to explore all avenues of operation for the purpose of improving utilization and to increase productivity in the railroad industry. Among the various assignments being carried out in this program are identifying, analyzing, and documenting car utilization problems and evaluating the various operations to these problems. Also to analyze freight car movements in order to develop representative car cycle profiles and to assess such car cycle data. The program is also arranged to assist in developing and formulating a research, development, and demonstration program for railroad car management systems, as well as to study the reliability of service.

Moreover, the Commission is also participating in studies with the National Commission on Productivity on the utilization of containers and trailers used in COFC and TOFC service. Productivity in this mode of operation may be increased, of course, by finding means of having the trailers and containers returned under load rather than empty.

In other areas, the Commission has endorsed and encouraged the development of the American Rail Box Car Company, an organization including all class I railroads, which purchases free running box cars and flat cars for the use of all members. In the present fiscal year, Rail Box will complete expansion of its fleet to 10,000 plain box cars. This pooling of railroad car service improves the utilization and, therefore, the productivity of these box cars. Similarly, the Commission has endorsed and approved the clearing house concept established by three railroads, which enables the railroads involved to use each other's cars interchangeably, thus reducing empty return mileage. The Commission has actively encouraged other railroads to join in this concept.

8) What Agency Procedures Are Excessively Time-Consuming or Burdensome? (What Steps Are You Taking to Improve the Situation?)

Internally, this question has most recently been addressed at the Commission by its Blue Ribbon Panel. I will review briefly some of its recommendations, as well as provide a status report with respect to each of them.

- A proposed rulemaking proceeding instituted on October 6, 1975, as Ex Parte No. 55 (Sub-No. 14), provides for a significantly altered procedure in filing applications for various types of operating rights authorities, including a requirement that the entire case be submitted with the initial application. It has been argued that the present procedures give encouragement to the applicant with a weak affirmative case and the casual protestant, thus overburdening the Commission with frivolous applications and protests. Public comments are due on the proposed rule by February 20, 1976. The rule, if adopted, should reduce case processing time.

- A Special Task Force has been established to undertake a comprehensive examination of the Commission's Rules of Practice with the objective of modernization, where feasible. The Task Force has solicited comment for the purpose of proposing changes in a rulemaking proceeding. It is anticipated that revisions will generally tend to expedite the regulatory process through deletion or modification of burdensome practices.

- In a proceeding instituted on October 24, 1975, as Ex Parte No. 55 (Sub-No. 19), a proposal has been published that the Rules of Practice be revised to limit the number of pages of petitions for reconsideration. Presently, these pleadings are not limited in scope and length, and the petition stage in some cases, has become a time-consuming paper-generating exercise, providing little additional insight. The proposal applies to petitions filed following a decision of an Administrative Law Judge or Review Board. Comments have been received, and the matter is under review at the present time.

- The Commission currently has a backlog of cases, which is in part due to an inclination toward an "overkill" in factual data set forth in orders of the Commission. In attempting to alleviate this problem, a brief, but legally sufficient, order format has been developed for use by Review Boards in handling routine operating rights modified procedure cases. This format is currently being used in a semitest environment. It is expected significantly to increase output efficiency from two standpoints: (1) the order format is shortened and streamlined; and (2) it is readily adaptable to automatic typewriters. Although experience may require some further modification of the format, we expect to be fully operational in the near future, with far greater efficiency in processing these cases anticipated.

- In an effort to increase efficiency in case handling, the Commission has approved the imposition of time limitations on all internal phases of case processing. While the Commission does, to some extent, operate on specified internal time stand ards, generally the Commission does not now specify particular time limits except in connection with rate suspension matters. A coordinated research effort within the Commission has identified the critical areas to be resolved to make such time limits practical and reasonable. The limits will be monitored by a new computer system for case control information. Implementation of the finance case portion of the case control system has been accomplished, with expansion to the balance of the cases expected prior to the close of calendar year 1976.

- Another major procedural reform that has greatly reduced the average amount of time for a Commission case is the greater reliance by the Commission on a procedure whereby many motor carrier application cases are handled by a "modified procedure" without the need for oral hearing. In these cases, verified written statements are submitted in lieu of oral testimony and oral hearings are held for the sole purpose of cross-examination and only when material facts are in dispute. The establishment of modified procedure has withstood a number of court challenges, and the Commission now handles about 83 percent of its motor carrier operating authority cases by modified procedure. Modified procedure has had a

very beneficial effect on the reduction of processing time in Commission cases while affording the parties an expeditious disposition of the proceedings.

We believe that out internal reform efforts are beginning to show tangible results in other ways. In the past calendar year, the pending docket of formal proceedings cases was reduced 7 percent. The reduction in the last six months is even more dramatic--from 8,044 to 7,549. During the last year there also has been a 40 percent reduction in the number of cases 2 years old or older.

With regard to legislation, one of the major areas that the Commission has focused on is the extent to which the Interstate Commerce Act unnecessarily contributes to regulatory delays through time-consuming procedures. The procedural provisions of the Interstate Commerce Act antedate and are more extensive than the requirements of the Administrative Procedure Act. The Commission has developed and submitted the following

proposals for streamlining and improving the Commission's procedures required by statute:

(1) Modification of section 17 of the Act, which imposes excessive procedural requirements on the Commission that tend to drag out our cases. It requires at least two levels of review within the Commission in most instances where an initial decision is made below the division level of the Commission. First, a litigant may file exceptions under section 17(5). Then, after the decision on exceptions, the litigant has a right to petition for reconsideration of that decision under the last sentence of section 17(6).[2/] As if this were not enough, under section 17(7), parties have a right to another round of reconsideration if the latter decision results in any change in the prior order or decision. Under section 17(8), any order of a board or division of Commissioners is stayed automatically pending reconsideration. Finally, under section 17(6), a party may continue to petition for discretionary Commission review of matters of general transportation importance.

2/ The only exception to this rule of double appellate review occurs where the decision affirms in all respects both the rationale and result of the Administrative Law Judge and where that decision is made by the entire Commission or a division of three Commissioners.

Our proposal would delete these excessive and burdensome review provisions and would substitute a simple and logical review process in accordance with the Administrative Procedure Act. With regard to rail proceedings the changes recommended by the Commission were largely adopted in section 303 of the Railroad Revitalization and Regulatory Reform Act. No action has yet been taken, however, regarding procedural reform for cases involving motor carriers, water carriers, or freight forwarders.

(2) Authorization for the Commission to exempt from regulation any transportation service when continued regulation appears not to serve any useful public purpose. This proposal is beneficial in two respects--it allows for the removal of regulatory controls when such controls are not in the public interest, and it permits the Commission to commit its resources more efficiently in those regulatory areas that are necessary.

(3) Several proposals that would increase the number of smaller merger and pooling cases that the Commission would be authorized to process under informal, expedited procedures, rather than through formal adjudication.

(4) Authority to make Commission orders effective on less than 30 days notice when appropriate, rather than having to provide for a waiting period of at least 30 days as presently required.

(5) Jurisdiction to enter railroad car service orders when a transportation emergency is anticipated. At present, the Commission must wait until it can make a finding that a transportation emergency exists before it can enter an emergency car service order, but under this proposal, the Commission could act expeditiously to prevent such emergencies.

(9) Allocation of Commission Money and Personnel by Function in the Last Three Fiscal Years

In carrying out the mandate of the National Transportation Policy, the Commission has established five functional activity areas: (1) Formal Proceedings; (2) Compliance; (3) Financial Oversight; (4) Tariff Examination; and (5) Planning Rail Service. The resources employed in and projected for each of these areas for Fiscal Years 1975-1977 are shown in the chart below:

INTERSTATE COMMERCE COMMISSION

OBLIGATIONS AND POSITIONS

BY ACTIVITY

ACTIVITY	FY 1975 Actual 1/ Positions	FY 1975 Actual 1/ Amount	FY 1976 Estimate 2/ Positions	FY 1976 Estimate 2/ Amount	FY 1977 Estimate Positions	FY 1977 Estimate Amount
Formal Proceedings	899	$21,345,600	1,001	$24,012,500	1,060	$27,819,400
Compliance	690	13,785,700	677	15,831,700	662	16,229,000
Financial Oversight	263	5,781,100	237	5,971,700	245	6,555,300
Tariff Examination	215	3,557,600	207	3,914,100	207	4,072,300
Planning Rail Service	75	2,890,000	75	1,100,000	--	---
Total ICC	2,142	$47,360,000	2,197	$50,830,000	2,174	$54,676,000

1/ Includes $2,390,000 unobligated balance for Planning Rail Service brought forward from FY 74. Positions and dollars for management and administration have been pro-rated among all activities except Planning Rail Service.

2/ Includes a pending supplemental for pay raise of $1,500,000 in FY 76.

MARKETPLACE REGULATION

The Commission endeavors always to be of assistance to those utilizing transportation services. In the earlier question concerning our consumer protection program, I discussed major actions which the ICC has recently undertaken in order to assist consumers. Briefly, these include: establishment of our Consumer Information Office; continuing publications in our Public Advisory series; monthly publication of the Consumer Bulletin; toll free consumer hot lines; public participation in rulemaking proceedings; and various regulations designed to improve the service of household goods carriers and passenger carriers.

HEALTH AND SAFETY REGULATION

Since the Commission's primary responsibility of regulating safety with respect to carriers subject to the Interstate Commerce Act was transferred to the Department of Transportation in 1967, there is no specific Commission money or people allocated to this function. However, the Commission, for example, with regard to its continuing motor carrier fitness program, retains a capability of furthering transportation safety as the occasion presents itself in cases and otherwise, without maintaining an isolated safety program. As other examples, in recent years the Commission has imposed regulations limiting smoking on buses, imposed service standards on passenger trains to ensure a satisfactory level of passenger health and comfort, and within this past year has initiated efforts and fostered continuing cooperation with the Department of Transportation to improve that Department's participation

Growing concern for the quality of the environment led to the passage, in 1969, of the National Environmental Policy Act (NEPA), which requires extensive assessment on the part of all Federal agencies of the environmental

impact of major actions. Several court tests of the Commission's methodology in handling environmental considerations have helped it in developing a program which is consistent with the intent of NEPA.

A private consulting firm, Mitre Corporation, was retained initially for the purpose of helping the Commission develop proper criteria for the performance of threshold assessments and environmental impact statements. These criteria have been developed and accepted by the Council on Environmental Quality assuring that we are, in fact, complying with the Act.

A Commission staff of engineers, biologists, social and physical scientists, land use planners and attorneys has been assembled and charged with the continued implementation of NEPA. One of the main functions of this staff is to deal with a backlog of rail abandonment cases, which was caused by protracted litigation over the procedures for environmental analysis in an abandonment proceeding.

In addition to these important cases, the environmental staff has many other responsibilities. For instance, in an effort to determine the diversion of rail passengers resulting from fare increases, the environmental staff developed a model assessing the effects of such increases over the past ten years and clearly identified that significant passenger diversion did, in fact, occur. Other notable areas of the Unit's concern are whether the granting of

preferential rates for the transportation of recyclables would encourage conservation, and how promotion of more fuel-efficient movements might minimize exhaust emissions.

The resources allocated to the Environmental Quality Staff have increased from 20 positions and $357,000 in Fiscal Year 1975 to 23 positions and $512,000 for Fiscal Year 1977.

ECONOMIC REGULATION

Of course, the Commission's primary function is that of economic regulation, and this entire presentation has dealt with that function. Hopefully, the presentation has given this Subcommittee a satisfactory overview of the extent of this primary Commission function and how the Commission utilizes its resources to carry out this function.

ENABLING REGULATION

The Commission, under section 5 of the ICA reviews carrier merger proposals for the purpose of ensuring that such proposals are in the public interest. Also, under section 5a of the Act, the Commission supervises the activities of rate bureaus for the purpose of protecting the carriers' absolute right to set their rates independently. As previously discussed, the Commission has just recently, in Ex Parte No. 297, conducted an extensive investigation of rate bureaus and promulgated new regulations regarding rate bureau activities.

This concludes my prepared remarks. I and my colleagues would be happy to answer any questions that you might have.

APPENDIX A

Chronological Description of the Rock Island Merger Proceedings

The Rock Island proceedings have been considerably lengthened by the Commission's attempt to comply with requirements that all parties receive procedural due process. As will be shown, it is a very complicated case. However difficult, the Commission has benefited from its review of the handling of case, and the criticisms of the parties and the general public. Future proceedings of such magnitude will, if appropriate, be divided into parts and handled by a team of Administrative Law Judges, rather than the sole judge used herein. Also, this proceeding has helped produce within the Commission a general examination of regulatory lag. Many of the recommendations of the Blue Ribbon Panel, discussed in the body of this statement, are aimed at reducing the length of Commission proceedings.

The Rock Island merger proceeding was complicated by the fact that two competing sets of railroad partners, the North Western and Santa Fe on one side, and the Union Pacific and the Southern Pacific, on the other, originally sought to acquire and divide the Rock Island, and both groups' applications and supporting evidence had to be considered by the Commission. The proceeding was initiated on July 5, 1963, when the Chicago and North Western Railway filed its application for authority to acquire control of the Rock Island. Subsequently, by application filed November 22, 1963, as amended December 10, 1963, and October 7, 1965, the North Western filed an application to issue its certificates of deposit in exchange for shares of Rock Island common stock. The application for authority to issue the certificates of deposit was authorized by the Commission by a report decided on March 8, 1965, and a supplemental report decided on December 20, 1965.

The Union Pacific entered the proceedings on September 10, 1964, when it filed three applications for authority to merge

with Rock Island, or alternatively to acquire control of the Rock Island. It too sought Commission authority to issue its own certificates of deposit in exchange for Rock Island common stock and the Commission authorized Union Pacific to issue its certificates by an order served on March 8, 1965.

Southern Pacific entered the proceedings on April 15, 1965, when it filed an application to acquire the southern portion of Rock Island from the Union Pacific, and Santa Fe entered the proceedings on December 13, 1965, when it filed an application to acquire the southern half of the Rock Island in partnership with the North Western. Thus, not until early 1966 were the parties in a position to go to hearing.

Hearings on the proceeding were opened on May 4, 1966, before Administrative Law Judge Paul C. Albus. Subsequently, Mr. Albus was injured, and after a delay of a few weeks, another Administrative Law Judge, Mr. Nathan Klitenic, was added, and he continued the hearings in the proceedings. A total of 17 railroad intervened, and 56 other parties participated in the hearings, which were conducted in seven cities. Some 279 days of actual hearings were held at seven different locations, producing a record encompassing over 100,000 pages of testimony and exhibits. The hearings were closed on August 22, 1968, and initial briefs were submitted within five months, by January 27, 1969. Thereafter, on September 24, 1969, the North Western

petitioned for additional hearings on certain peripheral issues, held on November 18 and 19, 1969, and April 15 and 16, 1970, after which further briefs were filed by the North Western and some of the other parties.

In the meantime, the Commission on March 31, 1970, having denied its application to merge with the North Western, the Milwaukee on April 6, 1970, petitioned for inclusion in either the Union Pacific system or Southern Pacific system, as a condition to approval of the Union Pacific-Rock Island merger and Southern Pacific purchase application. Most of the other applicants resisted, but on May 15, 1970, the Commission ordered the proceedings reopened for consideration of Milwaukee's request.

Mr. Albus, the senior hearing officer, retired on May 1, 1970, and most of the recommended report and order was drafted by Mr. Klitenic. The hearing officer's report and recommended order which encompassed some 1,400 pages, was served in three volumes, with Volume I served on September 1, 1971, Volume II on March 21, 1972, and Volume III on February 16, 1973. Completion of the report and recommended order was delayed when Administrative Law Judge Klitenic suffered a heart attack. Reassignment of the case was considered by the Commission but rejected at the urging of several of the parties because

of Mr. Klitenic's unique familiarity with its large and complex record. In his report Mr. Klitenic recommended that the Rock Island case be used as a vehicle to restructure most of the railroad system in the Western half of the nation into four huge systems; Union Pacific, Southern Pacific, Santa Fe, and Burlington Northern.

Following service of the final volume of the recommended report and order, and at the request of Southern Pacific and several of the parties to the case and in view of the case's complexity, the deadline for filing exceptions to the report and recommended order was extended from March 15 to August 17, 1973, and the deadline for answers to the exceptions from April 5 to October 19, 1973. At the request of the parties, oral arguments were heard by the Commission on November 26 and 27, 1973. Before reaching its decision the Commission also had to consider a petition to dismiss the proceedings filed by most of the major railroads participating in the case, including Santa Fe, North Western and Southern Pacific on March 8, 1973. That petition was denied by the order of the Commission served May 7, 1973.

The Commission's report, which approved the merger of the Rock Island with the Union Pacific, subject to a number of conditions, was decided on October 29, 1974 and served on December 3, 1974. The report departed significantly from the Administrative Law Judge's recommendations and conditioned approval of the basic Union Pacific-Rock Island merger so as to require sale of portions of the Rock Island to the Denver & Rio Grande, Southern Pacific, Santa Fe, and Fort Worth & Denver railroads.

A total of 26 petitions for reconsideration of the Commission's report were filed, including 12 filed by major railroads. In the meantime, Rock Island encountered increasing financial difficulties, and on March 17, 1975, the carrier filed a petition for reorganization,under section 77 of the Bankruptcy Act, in the U.S. District Court for the Northern District of Illinois. Subsequently, in April 1975, Union Pacific, Santa Fe, and several other major railroads filed petitions or motions for dismissal or denial of the merger proceedings. Southern Pacific and Rio Grande, however, expressed continuing interest in acquiring portions of the Rock Island, and they opposed dismissal of the proceedings.

Accordingly, the Commission, by order served January 12, 1976, dismissed the Union Pacific, Santa Fe and North Western applications, and, in view of the changed circumstances, granted Southern Pacific and Denver & Rio Grande 180 days in which to amend their applications. Dismissal of the Union Pacific, Santa Fe, and North Western applications was to be effective 180 days after the service date of the order, unless any of the respective applicants indicated a renewed interest in the proposed mergers. Thus, at the present time, further consideration of the merger proceedings awaits indications by the various railroads as to their future intentions.

APPENDIX B

PUBLIC AND CONSUMER ACTIVITIES OF THE RAIL SERVICES PLANNING OFFICE

The Rail Services Planning Office ("Office") established under Sec. 205 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 715) was assigned, in addition to its other duties, particular responsibility for soliciting and evaluating the views of all elements of the public with respect to present and future rail service needs of the 17-State midwest and northeast region. Under the Railroad Revitalization and Regulatory Reform Act of 1975 as reported in Senate Report No. 94-585, it is assigned additional responsibilities for providing public input not only with respect to the implementation of the rail reorganization process in the midwest and northeast region, but also with respect to rail restructuring and other transportation problems of a national scope. The following summary of the Office's "public input" activities therefore is presented under three main headings: (I) activities to date under the Regional Rail Reorganization Act of 1973; (II) further activities contemplated under the Regional Rail Reorganization Act of 1973; and (III) other contemplated activities involving public and consumer participation.

I. Activities to Date under the Regional Rail Reorganization Act of 1973.

(A) Evaluation of the Secretary's Report.

As the first step in the reorganization processes, the Secretary of Transportation on February 1, 1974, issued a two-volume report entitled "Rail

Service in the Midwest and Northeast Region" (the "DOT Report"). During the first three weeks of March, 1974, the Office initially conducted 71 days of public hearings at 17 cities in the region, involving 2,691 witnesses, 14,531 pages of testimony, more than 1,500 documents in lieu of oral testimony, and several thousand additional written statements submitted after the formal closing of the record. To assist members of the public in participating; the Office disseminated on March 18, 1974, a booklet entitled "Implementation of the Regional Rail Reorganization Act", which contained a simplified description of the Act's principal provisions and a list of sources from which copies of the DOT Report could be obtained.

At each hearing location, one, in most instances two, attorneys from the Public Counsel's office were assigned to represent the public. For this series of hearings, the Public Counsel's permanent staff of four attorneys was supplemented by 26 other attorneys who were retained for this purpose. The Public Counsel's office attorneys supplemented the Office's other governmental and industrial liaison activities by spreading information about the Act and the DOT Report directly to those most immediately affected. Each hearing city was visited by at least one attorney several days prior to the scheduled hearing in order to assist the public directly and to solicit suggestions first-hand.

In response to public demand, additional hearings were held by the RSPO throughout the region. In total over 3,800 persons testified at 32 hearings which the Office held between March 4 and July 11. The record of the public's participation amounted to nearly 50,000 pages, including hearing transcripts, exhibits, and statements sent directly to Washington independently of any hearing.

On May 2, 1974, the Office published its Evaluation of the Secretary of Transportation's Rail Services Report. In addition, restatement in condensed form of all the material submitted was issued by the RSPO in the following volumes:

The Public Response to the Secretary of Transportation's Rail Services Report:

Volume I	New England States
Volume II	Mid-Atlantic States
Volume III	Mid-Western States

(B) Preliminary Views on Rail Restructuring.

On November 13, 1974, the United States Railway Association published its Annual Report dated June 30, 1974, with a Supplemental Report through October, 1974. In part, this report was a substitute for the Preliminary System Plan, issuance of which was postponed from the originally scheduled date of October 29, 1974, to February 26, 1975.

Because of public interest in the restructuring process, the Office announced in the Federal Register of December 2, 1974, that it would receive public comment on the Association's annual report. Responses were received from a wide spectrum of the public, ranging from large rail shippers to small family businesses, individual railroad passengers, public officials, railroad officials, and spokesmen for rail labor. The results of these comments and suggestions as well as the Office's own analysis were published January 10, 1975, in a report entitled "Preliminary Views on Rail Restructuring".

(C) Evaluation of the Preliminary System Plan.

The Association's Preliminary System Plan, published February 26, 1975, was a massive document of 18 chapters, 11 appendices, and 820 pages. There

was tremendous public interest in the issues raised by it, and 27 cities throughout the region were selected as hearing sites.

Twenty hearings were held the week of March 17th, and seven more during the week of March 24th. The hearing locations and the numbers of witnesses appearing at each location were as follows:

Akron, Ohio	59	Indianapolis, Indiana	94
Albany, New York	54	Lansing, Michigan	176
Allentown, Pennsylvania	30	Montpelier, Vermont	6
Altoona, Pennsylvania	27	New York, New York	43
Boston, Massachusetts	117	Pittsburgh, Pennsylvania	65
Buffalo, New York	90	Providence, Rhode Island	36
Charleston, West Virginia	24	Salisbury, Maryland	105
Chicago, Illinois	38	Scranton, Pennsylvania	79
Columbus, Ohio	95	Springfield, Illinois	78
Erie, Pennsylvania	59	Syracuse, New York	112
Fort Wayne, Indiana	64	Traverse City, Michigan	74
Green Bay, Wisconsin	40	Trenton, New Jersey	115
Harrisburg, Pennsylvania	81	Washington, D. C.	22
Hartford, Connecticut	129		

Over 1900 witnesses testified during the course of 87 hearing days, resulting in a hearing record of over 10,000 pages. More than 500 documents were submitted in lieu of oral testimony prior to the March 28th cut-off date, which had to be established in order for submissions to be considered in the preparation of a report. In addition, 36 witnesses testified at hearings held in Bear Mountain, New York, and Bellmawr, New Jersey, under the auspices of the congressmen from those districts. Verbatim transcripts of those hearings were provided to the Office for inclusion in the formal record.

After review of the public testimony, a large number of written statements, and analysis in depth by its own staff, the Office issued on April 28, 1975, its report entitled "Evaluation of the U. S. Railway Association's Preliminary System Plan.

(D) The Erie Lackawanna Supplement.

The decision of the trustees of the Erie Lackawanna Railway (EL) to bring their properties under the restructuring process of the Regional Rail Reorganization Act came too late for these lines to be treated in the Preliminary System Plan. Accordingly, the Association issued a supplement in May, 1975, addressing the light-density lines of the EL and coordination projects involving its trackage. Because of the very tight time schedules, it was necessary that hearings be scheduled for eight locations during the week of June 9, 1975. The hearing locations and the numbers of witnesses appearing at each location were as follows:

Goshen, New York	28	Decatur, Indiana	22
Newark, New Jersey	11	Hammond, Indiana	19
Olean, New York	78	Marion, Ohio	28
Youngstown, Ohio	27	Scranton, Pennsylvania	32

After reviewing and summarizing the testimony, the Office in June, 1975, published "Evaluation of the U. S. Railway Association's Final System Plan - Supplemental Report".

(E) The Final System Plan.

The Final System Plan was delivered to Congress on July 26 and copies were made available to the Commission and the Office late on July 28. Although the Act did not provide for public input at this stage of the reorganization process, the Chairmen of the cognizant subcommittees in the House and Senate requested the Office to solicit public comment for consideration by their Committees. Accordingly, on July 17, before the issuance of the Final System

Plan by the Association, the Office announced that it would receive written comments until August 29. It particularly requested that responses address the broader issues of the restructuring process rather than the issue of light-density lines which had been the principal focus of interest in the public hearings, so that the Congress might have the benefit of the public's views on these broader issues.

The volume and scope of the written public response was surprisingly great, and it became necessary to extend the time for receiving comments to September 12. After all of the comments were received, they were summarized and published September 30, 1975, in "A Report to the Congress on the Public Response to the U. S. Railway Association's Final System Plan".

The statutory deadline for the completion of the Commission's review did not permit it to take account of all these public responses. At the request of the Commission, however, the staff of the Office submitted its views for the Commission's consideration.

(F) Rail Service Continuation Subsidy Standards.

Sec. 205 (d) (3) of the Act placed upon the Office the responsibility of determining and publishing standards for determining the "revenue attributable to the rail properties", the "avoidable costs of providing service", and "a reasonable return on the value", as those phrases are used in Sec. 304 of the Act, after a proceeding in accordance with the provisions of Sec. 553 of title 5, United States Code, and of assisting States and local and regional transportation authorities in

making determinations whether to provide rail service continuation subsidies.

Accordingly, on February 25, 1974, the Office published in the Federal Register a notice of proposed rulemaking and order; after an extended period for public comment, standards were issued on July 1, 1974 (39 FR 24294), but on July 30 a notice was issued announcing that petitions seeking amendment of the standards would be accepted if filed on or before August 19, 1974. At the request of several parties, on September 10, 1974, the Office announced that the standards would be tested on actual branch lines, and that the time for pleadings was being extended to October 30, 1974 (39 FR 33544).

Following an in-depth analysis of the petitions received and of the results of the testing, the Office published revised standards on January 8, 1975 (40 FR 1624), but because of significant changes from the original version invited additional comments to be filed by February 18, 1975. Amendments resulting from these comments were published March 28, 1975. During the course of these rulemaking proceedings, a substantial amount of input was received from a wide spectrum of the public interested in the preservation of rail service to smaller communities, as well as from the representatives of public agencies or authorities, railroad management, and representatives of railroad labor. As the actual negotiation of subsidy agreements has begun, the necessity for reopening the standards for amendment in the light of experience has been demonstrated, and by notice published in the Federal Register of January 22, 1976, two amendments were ordered, with comments to be entertained until March 1, 1976.

Also, on June 9, 1975, the Office issued a notice of intent to establish criteria pursuant to Sec. 205 (d) (4) of the Act. Here, the public participation and interest was not nearly so marked as in the case of the subsidy standards or the reviews of the DOT Report, the Preliminary System Plan, or the Final System Plan. Nevertheless, some valuable and thoughtful responses were received, and on November 7, 1975, the Criteria for Rail Service Continuation Subsidies were issued (40 FR 52200).

II. Further Activities Contemplated under the Regional Rail Reorganization Act of 1973.

(A) Commuter Rail Passenger Service Subsidy Standards.

The Office is instructed, under the amended Sec. 205 (d) (5) of the Act, to issue additional regulations containing standards (1) for the computation of subsidies for rail passenger service, and (2) for the determination of emergency commuter rail passenger operating assistance provided by the Secretary pursuant to Sec. 17 of the Urban Mass Transportation Act of 1964 (as amended).

The Office had begun conversations before the enactment of this amendment with representatives of the Urban Mass Transportation Administration, with the States and the various commuter authorities, so as to determine the scope of the problem and the issues involved. It is now contemplated that a notice of proposed rulemaking will be issued in the Federal Register by the end of February, 1976, preliminarily ruling on the issues as then seen, but inviting public comment and participation in the rulemaking process.

(B) Accounting Regulations.

Amended Sec. 205 (e) (1) (A) of the Act assigns the Office the function of issuing, within 270 days after the effective date of the Final System Plan, regulations which will develop an accounting system applicable to ConRail and to other railroads providing service over subsidized lines, which will produce information necessary for an accurate determination of the required subsidies.

The function overlaps, to some degree, the duties assigned the Commission under Sec. 307 of the Railroad Revitalization and Regulatory Reform Act, although its purpose is somewhat more specific and immediate. The Office will consult with the Commission's Bureau of Accounts before opening a proceeding under this section to insure that there is no duplication of effort or conflict of rulings. However, because of the brief statutory period for completing the proceeding and the known public interest in it, a notice of proposed rulemaking will be issued at a very early date. It is anticipated that a substantial amount of public participation in this proceeding will take place.

III. Other Contemplated Activities Involving Public and Consumer Participation.

Several new functions not directly related to the Northeast restructuring are assigned the Office under the Railroad Revitalization and Regulatory Reform Act of 1975. Some of these will obviously require a high degree of public participation; as to others, the extent of public participation may be somewhat less, but the Office conceives its primary mission to be one of assisting the public in matters

affected by transportation regulation and of attuning that regulation to changing public needs.

These new functions include:

(A) National Light-Density Line Regulations.

Sec. 205 (e) (1) (B) of the Railroad Revitalization and Regulatory Reform Act requires the Office to issue, by about November 9, 1976, regulations for determining the "avoidable cost" of providing rail freight service on light-density lines, as that phrase is used in amended Sec. 1a (f) (1) (B) of the Interstate Commerce Act. This will be done through a rulemaking proceeding, in which public participation is expected to be substantial.

(B) Classification and Designation of Rail Lines.

Sec. 503 of the Railroad Revitalization and Regulatory Reform Act of 1975 provides a process by which rail lines throughout the nation are to be classified and designated according to standards developed by cooperative action of the Secretary of Transportation and the Office. The function of the Office will be to hold public hearings throughout the nation on preliminary standards and designations promulgated by the Secretary, to review the record of the hearings, conduct its own studies, and release to the Secretary its conclusions and recommendations.

As yet, no plan or staffing has been developed by the Office for performing this function, but the Office regards it as an extremely important one, in which a high degree of public interest can be anticipated. The time schedule for performing it is extremely brief.

(C) Merger, Consolidation, Coordination and Control Projects.

Secs. 205 (d) (1) of the Regional Rail Reorganization Act and Sec. 5 (3) (d) of the Interstate Commerce Act as newly amended assign to the Office certain functions of assisting the Commission in studying and evaluating proposals for merger, consolidation, control, coordination projects, joint use of tracks or other facilities, and acquisition or sale of assets by carriers.

The exact scope of the Office's activities under these sections of the law has not yet been worked out. It is to be presumed, however, that they will involve bringing public participation and soliciting public views in matters involving Sec. 5 (2) of the Interstate Commerce Act.

(D) Development of Policies.

Sec. 205 (d) (2) of the Regional Rail Reorganization Act, as amended, instructs the Office to assist the Commission in developing policies which are likely to result in a more competitive, energy efficient, and coordinated transportation system which utilizes each mode of transportation to its maximum advantage to meet the transportation service needs of the nation.

Here again, the Office has not yet had time to determine in just what way it will function in carrying out this mandate. However, it is to be assumed that discharge of this duty will involve a considerable degree of public contact and solicitation of views from those interested in and affected by transportation regulation.

IV. Exhibits.

Attached is a list of exhibits typifying the publications issued by the Office in carrying out its mandate under the Regional Rail Reorganization Act to encourage public participation in the rail restructuring process in the Northeast.

Sample of Rail Services Planning Office's Publications

Implementation of the Regional Rail Reorganization Act of 1973, March, 1974.

Evaluation of The Secretary of Transportation's Rail Services Report, May, 1974.

The Public Response to the Secretary of Transportation's Rail Services Report, Volume 1, New England States, August, 1974.

The Public Response to the Secretary of Transportation's Rail Services Report, Volume 2, Mid-Atlantic States, October, 1974.

The Public Response to the Secretary of Transportation's Rail Services Report, Volume 3, Midwestern States, January, 1975.

Preliminary Views on Rail Restructuring, Comments of the Rail Services Planning Office on the United States Railway Assocation's First Annual Report and Supplemental Report, January, 1975.

Implementation of the Regional Rail Reorganization Act of 1973, Revised Edition, January, 1975.

Evaluation of the United States Railway Association's Preliminary System Plan, April, 1975.

Evaluation of the United States Railway Association's Preliminary System Plan, Supplemental Report, June, 1975

A Report to the Congress on the Public Response to the United States Railway Association's Final System Plan, September, 1975

****

Rail Services Continuation Subsidies, Standards for Determining, July,19
Standards for Determining Rail Service Continuation Subsidies, January,
Rail Services Continuation Subsidies, Standards for Determining,March,19
Rail Service Continuation Subsidy Decisions, Intent to Establish Criteria, June, 1975
Continuation Subsidy Decisions, Criteria for Rail Service, November, 197
Standards for Determining Rail Service Continuation Subsidies, Miscellaneous Avoidable Costs, December, 1975

****

Proposed Work Forms for Use in Determining Branch Line Subsidy
Map of the Midwest & Northeast Region Depicting Potentially Excess Rail Lines as Identified by the Secretary of Transportation
Map of the Midwest and Northeast Region Depicting Rail Lines Not Recommended for Inclusion in the ConRail System as Identified in the U Railway Association's Preliminary System Plan

APPENDIX C

FIRST PORTION OF THE FEDERAL CENTRAL OFFICE
PHASE OF CONTRACT NO. HEW-OS-74-292

FEASIBILITY STUDY TO IMPROVE HANDLING OF CONSUMER COMPLAINTS

EVALUATION REPORT

April 1975

The work upon which this publication is based was performed pursuant to contract HEW-OS-74-292 with the Department of Health, Education and Welfare.

TABLE ES1

RESULTS OF THE PROCESS EFFECTIVENESS EVALUATION

PERFORMANCE	OCA	CAB	CPSC	USOA	EPA	FCC+ A	FCC+ B	FCC+ C	FDA++ A	FDA++ B	FDA++ C	FEA	FPC	FTC	HUD OILSR	HUD HPMC	ICC	NHTSA	USPS	SEC
INPUT FUNCTION																				
Prescreening	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S
Logging - Executive Mail	E	E	E	E	E	E	U°	E	U°	E	E	E	E	E	E	E	E	U°	E	E
Logging - General Consumer Mail	E	E	E	E	U°	E	U°	E	U°	E	E	U°	U°	E	E	U°	E	U°	E	E
Logging - Telephone	E	E	E	U°	U°	E	U°	U	U°	E	U°	U°	U°	U°	U°	U°	E	U°	E	U°
Classification - Executive Mail	E	E	E	U	U°	E	U°	E	U°	S	S	U°	U°	E	E	U°	E	E	S	E
Classification - General Consumer Mail	E	E	E	U	U°	E	U°	E	U°	S	S	U°	U°	E	E	U°	E	E	S	E
Classification - Telephone	E	E	E	U	U°	E	U°	U°	U°	U	U°	U°	U°	U°	U°	U°	E	U°	S	U°
RESPONSE FUNCTION																				
Formulation (Appropriateness)	S	E	E	E	NA	NA	NA	U	E	E	E	U	NA	S	S	S	E	E	E	NA
Formulation (Clarity)	S	S	S	S	NA	NA	NA	U	S	S	S	S	NA	S	S	S	S	S	S	NA
Production - Provider	S	S	S	S	S	S	U	U	S	S	S	S	S	S	U	S	U	U	S	U
Production - Consumer	S	S	U	S	S	S	S	U	S	U	S	S	U	U	U	S	U	U	S	U
Signing	S	U	S	S	NA	NA	NA	U	S	S	S	S	NA	S	S	S	U	S	S	U
OUTPUT FUNCTION																				
Distribution	S	S	S	S	S	S	S	S	S	S	S	S	S	U	S	S	S	S	S	S
Storage and Retrieval	S	S	U	S	U	U	S	S	S	S	S	S	U	S	S	U	S	S	S	S
CONTROL FUNCTION																				
Internal Follow-up - Executive Mail	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Internal Follow-up - General Consumer Mail	U	E	S	S	U°	U	U°	U	U°	E	U	U°	U	E	U	U°	S	S	E	U°
Referral Follow-up	S	S	S	S	U°	S	S	S	S	S	S	U°	S	S	S	U°	S	S	S	S
MANAGEMENT FUNCTION																				
Statistical Reporting	S	E	S	S	U	S	S	S	U°	U°	U	U	U°	U	S	U°	S	S	S	E
Evaluation	S	S	U°	S	U°	U°	U°	U°	U°	U°	U°	U°	U°	U°	S	U°	S	S	E	S
Policy Analysis	S	E	E	S	U°	U	U	S	S	S	S	U°	U°	S	S	U°	S	E	S	S
Input to Policy	U	E	E	U	U°	U°	U	S	U	U	U	U°	U°	U	S	U°	S	E	S	S
Accountability	S	S	S	S	U	S	S	S	S	S	S	U	U	S	S	U	S	S	S	S
CREATION OF PUBLIC AWARENESS FUNCTION																				
(Methods Used)	E	E	E	E	U	U	U	S	E	E	E	U	U	E	S	U°	E	E	U	S
(Implementation at Point of Product Performance/Service Delivery)	≠	≠	≠	S	≠	U	U	S	S	S	S	≠	≠	≠	S	U	S	≠	S	≠

+ (A)Cable Television Bureau, (B) Common Carrier Bureau, C-Broadcast Bureau

++ (A)Office of Professional & Consumer Programs, (B)Office of Legislative Services, (C)Bureau of Drugs

U-Unsatisfactory
S-Satisfactory
E-Excellent
( )-Indicates Evaluation Criterion
≠-No Authority
NA-Not Available; these agencies not included in TARP/MF sample of agency files.
°-This function is not performed

Table ES1 is based on Sections 5 through 10 of the Evaluation Report.

Mr. Moss. Thank you very much, Mr. Chairman.

Do any other members of the Commission have statements to make at this time?

Mr. STAFFORD. No, sir.

Mr. Moss. Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman.

At this time I would like to introduce into the record the report on the Commission's compliance program prepared by the staff study panel on regulatory reform.

Mr. Moss. Pursuant to the previously granted unanimous consent, the document will be placed in the record at this point.

[Testimony resumes on p. 140.]

[The report follows:]

Interstate Commerce Commission
Washington, D.C. 20423

October 8, 1975

Mr. George M. Stafford
Chairman
Interstate Commerce Commission
Washington, D.C. 20423

Dear Chairman Stafford:

Pursuant to your memorandum of June 5, 1975, I am transmitting herewith the Staff Study Panel's Principal Recommendations concerning the Commission's Compliance Program.

The Panel has carefully reviewed the Commission's organization, operations, and procedures as they relate to the compliance program. It has held numerous interviews with officials and staff engaged in directing and carrying out the program at all levels. It has studied and considered prior management studies of the Commission and pertinent policy statements of the Executive Branch relating to organization, particularly in the field.

The principal weaknesses that we have found in the Commission's compliance program and the organizational units are similar in many respects to those identified in the earlier studies and more recently by the General Accounting Office. We have concluded that these fundamental weaknesses can be corrected only if all compliance functions are lodged in one organization.

Accordingly, the Panel's major recommendation is that the Bureaus of Enforcement and Operations and the audit function of the Bureau of Accounts be reorganized into a single Office of Compliance. Such a change is essential, in our view, if the Commission is to develop and maintain a compliance program that is responsive to present day circumstances. It is important to note that the Panel is only making conceptual recommendations with respect to the organizational changes. If the concepts are adopted it will be necessary to develop a comprehensive implementation plan which would also undoubtedly require Commission approval.

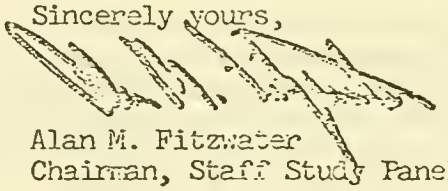
While the remaining recommendations should be considered even if the reorganization is not approved, we believe that the adoption of an Office of Compliance would facilitate their implementation. In fact, the lack of a single line of command is probably the main contributor to the problems underlying the other recommendations, and without correcting this basic flaw their achievement may be impossible.

Several items of less significance were brought to the Panel's attention, and were referred to the responsible organization or individual for action.

Since the first Panel's review covered basically the Commission's Formal Proceedings program and this Panel covered the Compliance Program, I hereby suggest that if a third Panel is to be appointed, it be instructed to review the Proceedings Support Program which would include the balance of the Bureau of Accounts, the Bureau of Economics, and the Bureau of Traffic.

The Panel stands ready to discuss the findings and conclusions which led to our recommendations with you or your designee.

Sincerely yours,



Alan M. Fitzwater
Chairman, Staff Study Panel

Report on the Commission's Compliance Program

PRINCIPAL RECOMMENDATIONS

Submitted to the Chairman
of the Interstate Commerce Commission
in accordance with his directive
dated June 5, 1975

prepared by the
Staff Study Panel on Regulatory Reform

Alan M. Fitzwater..... Chairman
Robert S. Burk..... Member
Thomas J. Byrne..... Member
Kenneth R. DeJarnette..... Member
Robert G. Rhodes..... Member

October 8, 1975

PRINCIPAL RECOMMENDATIONS

Recommendation No. 1

THE COMMISSION SHOULD BE REORGANIZED TO PLACE ALL COMPLIANCE FUNCTIONS IN A SINGLE OFFICE.

More specifically:

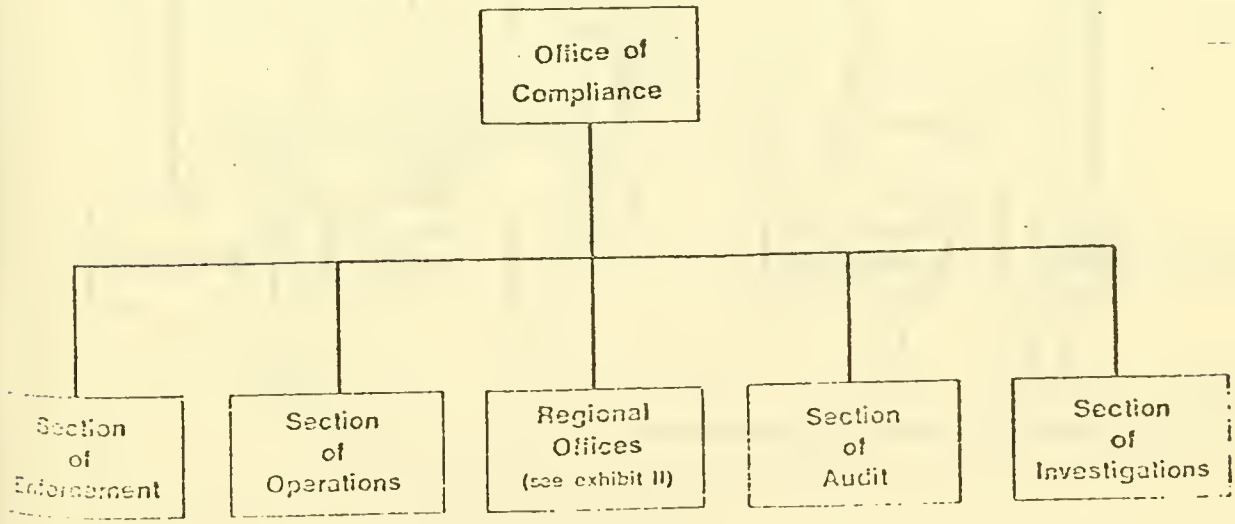
- An Office of Compliance should be established comprising the entire Bureaus of Enforcement and Operations and the Section of Audit (including field staff) of the Bureau of Accounts; the entire field staff should be reorganized to conform with the Office of Compliance concept. (See Exhibits I, II, and III)
- A strong policy and program development and evaluation function based upon a comprehensive information system should be established at headquarters level, and all day-to-day functions should be fully delegated to the field level.
- Four geographic regions should be established, each headed by an administrator responsible for all substantive, administrative and managerial duties in accordance with policy and procedures established at headquarters and reporting to the Director of the Office of Compliance.

- The headquarters and field staffs should be divided into four functional groups, viz., Audit, Enforcement, Investigations and Operations.
- Supervisory personnel should be assigned below the regional level where workload, number of employees, or geographic considerations dictate.
- Following implementation of the foregoing recommendations the Commission should consider further refinements in the overall headquarters organizational structure.
- Authority for issuing emergency temporary authorities should be assigned to the Office of Compliance and delegated to the field.

Exhibit I

Office of Compliance

Proposed Organization

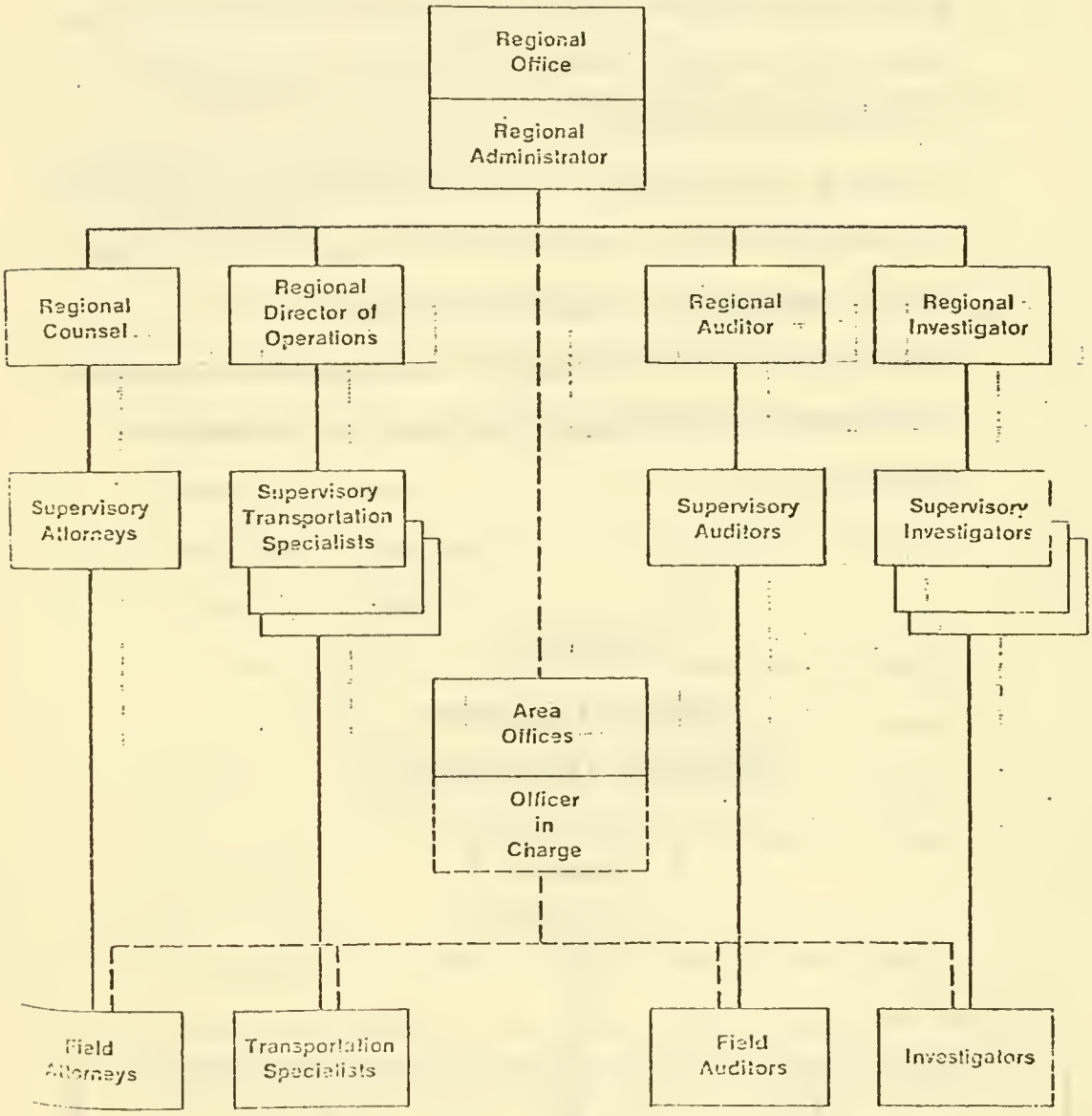


-3-

Exhibit II

Office of Compliance

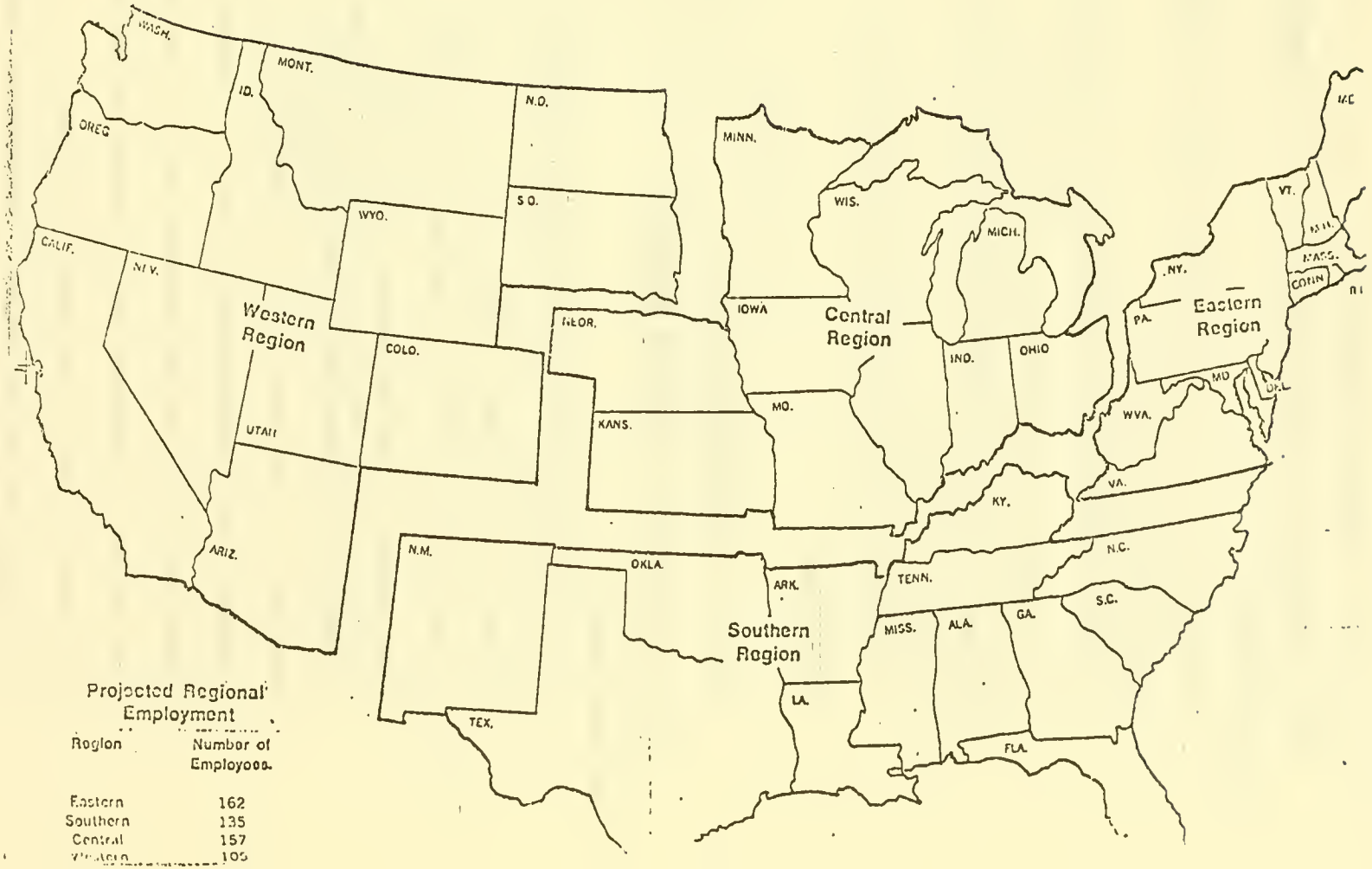
PROPOSED FIELD ALIGNMENT



Indicates Administrative Responsibilities Only.

Exhibit III

RECOMMENDED REGIONAL BOUNDARIES



Projected Regional Employment

Region	Number of Employees
Eastern	162
Southern	135
Central	157
Western	105

Recommendation No. 2

THE COMMISSION'S COMPLIANCE PROGRAM SHOULD BE REDIRECTED.

More specifically:

- The emphasis of the program should be shifted to areas of more economic significance.
- Increased emphasis should be placed on the compliance of water carriers, freight forwarders, and pipelines.
- Increased emphasis should be placed on shipper culpability in carrier violations.
- Authority over agricultural cooperatives should be strengthened.

Recommendation No. 3

POLICY IMPLEMENTATION SHOULD BE IMPROVED.

More specifically:

- Procedures should be adopted to assure more uniform application of Commission policy.
- A reporting system should be developed which will better measure the effectiveness of the program.
- A status control system for monitoring complaints, investigations, and cases should be established.
- An internal communications program should be created to provide input to policy determination and for the timely dissemination of Commission policy, directives and actions, plus general information on industry matters.
- A more aggressive program should be implemented to check compliance of violators.
- Coordination with state agencies should be strengthened.

Recommendation No. 4

A REVIEW OF THE EFFICACY OF ALTERNATIVE ENFORCEMENT PROCEDURES SHOULD BE CONDUCTED.

The review should include an analysis of:

- The effectiveness of civil forfeitures as a deterrent.
- The need for some form of summary enforcement procedure for minor violations.
- The feasibility of increased use of administrative remedies such as suspension and revocation and cease and desist orders.
- The need for seeking additional legislative authority.

Recommendation No. 5

THE SYSTEM BY WHICH FIELD STAFF EMPLOYEES ARE EVALUATED FOR PERFORMANCE AND PROMOTION SHOULD BE REVISED.

More specifically:

- Criteria emphasizing quality instead of quantity should be established.
- The established merit promotion program should be strictly adhered to.
- Personnel ratings should be performed by the employees immediate supervisor.

Recommendation No. 6

A COMPREHENSIVE TRAINING PROGRAM SHOULD BE DEVELOPED AND IMPLEMENTED.

The program should:

- Provide more concentrated study in the specific area to which the trainees will be assigned.
- Deemphasize intermodal training below supervisory level.
- Provide for systematic continuing education for experienced personnel.
- Relieve line employees of substantial training responsibilities.
- Provide for full-time training staff.

Recommendation No. 7

THE USE OF PARA-PROFESSIONAL AND PART-TIME EMPLOYEES SHOULD BE EXPANDED.

More specifically:

- Para-professional and part-time employees should be assigned to Amtrak and bus checks and similar activities.
- The Consumer Specialist and Transportation Assistant programs should be expanded.

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Recommendation No. 8

A PUBLIC INFORMATION PROGRAM, TAILORED TO FIELD OFFICE USE, SHOULD BE ESTABLISHED.

More specifically:

- Media relations should be established and/or improved at all local levels to insure more timely dissemination and more interesting presentation of information about ICC activities.
- An ongoing public information and education program should be established for the local and area-wide dissemination of information pertaining to ICC regulations and services offered by the Agency.

ADMINISTRATIVELY CONFIDENTIAL

Report on the Commission's Compliance Program

prepared by

Staff Study Panel on Regulatory Reform

Interstate Commerce Commission

Summary and Conclusions

Report on the Commission's Compliance Program

SUMMARY OF CONCLUSIONS

Submitted to the Chairman
of the Interstate Commerce Commission
in accordance with his directive
dated June 5, 1975

prepared by the
Staff Study Panel on Regulatory Reform

Alan M. Fitzwater..... Chairman
Robert S. Burk..... Member
Thomas J. Byrne..... Member
Kenneth R. DeJarnette..... Member
Robert G. Rhodes..... Member

October 8, 1975

INDEX

INTRODUCTION

At the direction of the Chairman, the Staff Study Panel on Regulatory Reform has undertaken a review of the Commission's compliance effort to determine how well it works and to ascertain ways in which it might be improved. As a part of the effort to carry out this assignment, panel members have interviewed over 150 headquarters and field personnel, attorneys in private practice, shippers, and carrier representatives. Guarantees of anonymity assured open discussions and frank answers to questions put to respondents. The Panel has assembled and synthesized these findings; read past reports and studies on the subject, interviewed other regulatory agencies (viz., CAB, FTC, FMC, and FCC), met many times to discuss our findings and thoughts, and from these efforts assembled the recommendations and text which follows.

One of the first subjects that the Panel addressed was the need to define the scope of the review. In the broadest terms, anything the agency does to carry out the mandate of the Act is a compliance effort. In the narrowest sense, compliance encompasses only those activities directed toward the enforcement of the regulatory acts and the Commission's published rules and regulations.

The Panel decided to concentrate on the field operations and related activities. As a result, the Panel defined the Commission's compliance program as consisting of the Bureaus of Enforcement and Operations in their entirety, the Section of Audit of the Bureau of Accounts, including its entire field staff, and the Regional Managers of the Managing Director's Office. Briefly, these organizations are charged with the responsibility

of insuring compliance with the IC Act and related acts and the regulations the Commission promulgates thereunder. This responsibility is carried out by both formal and informal means. Audits, compliance surveys and investigations are conducted and action taken on the more serious violations discovered, either through the Federal court system or Commission proceedings. The Bureau of Enforcement is responsible for handling formal and legal actions arising from violations discovered or documented by the other bureaus. The vast majority of violations, particularly in the motor carrier field, are brought to the Commission's attention by complaints and are handled informally with the carrier involved. Current functional statements and organizational charts are contained in the ICC Manual--Administration.

The Panel is greatly appreciative of the cooperation and assistance which it has received in the course of its study. The Panel found the Commission staff, both headquarters and field, to be dedicated and competent, and the criticisms and suggestions made to the Panel were, for the most part, motivated by an obvious desire to improve conditions within the Commission so that it can more effectively carry out its regulatory responsibilities. The Panel's recommendations are all made with this goal in mind, in the firm expectation that a more effective and efficient compliance program will yield benefits to the Commission, its staff, the industries which it regulates and the public which it serves.

DISCUSSION AND CONCLUSIONS

ORGANIZATION

The Commission's present organization and the functional assignments for conduct of its compliance program evolved from a series of reorganizations beginning in 1961, which were based on comprehensive internal and external studies of the program. 1/ While differing in purpose and scope, these studies all found:

- Lack of central direction and coordination of field activities;
- Insufficient delegation of routine functions to the field;
- Ineffective supervision and inefficient use of manpower and other resources in the field;
- Overlapping geographic patterns among the several bureaus with field staff.

The principal recommendation common to practically all of these studies called for a single line of command over the field staff for both management and operational purposes. This recommendation became the central issue in the ensuing deliberations. Instead of adopting the single bureau concept, the Commission opted for a compromise plan which became effective January 1, 1964. The Plan, which is essentially the structure in use today, established Regional Managers who reported to the Managing Director and whose responsibilities were limited to management matters. Technical direction of field employees was vested in the respective bureaus.

1/ A concise history of the chronological development of the organizational structure prior to 1962 is contained in the Commission's publication, Interstate Commerce Commission Activities, 1887-1937 and supplement thereto covering the period 1937-1962. See Appendix A for a history of changes thereafter and a summary of the studies conducted and proposals made at the time the present organization was adopted.

The Panel has found that the basic weaknesses identified in earlier studies still exist and have not been corrected by the present structure. These weaknesses include:

--An almost total lack of central policy development and coordination with respect to the compliance program resulting in a de facto delegation of policy making to the investigator level.

--Insufficient delegation to field level of authority to perform day-to-day functions.

--Ineffective supervision and inefficient use of manpower and resources due to: (1) headquarters involvement in day-to-day operations; (2) unmanageable geographic boundaries; (3) personnel evaluations based on quantity of cases handled instead of quality of work; and (4) divided and conflicting channels of authority.

--Ineffective and insufficient vertical and horizontal communication which: (1) fails to provide the Commission with information needed to identify general regulatory problems and take corrective action or to seek needed legislation in a timely manner; (2) fails to provide adequate information to enable the field forces to apply their efforts knowledgeably toward common, significant and directed regulatory problems and objectives; and (3) creates misunderstanding, friction and lack of coordination at all levels with the resultant waste of resources, morale problems and generally ineffective compliance activities.

The Panel found that there is little, if any, development or coordination of policy, either at the headquarters or field levels. Consequently, the compliance program lacks emphasis or direction. One field employee put it bluntly when he stated that the compliance program operates like a ship without a captain. The policy void produces several undesirable results. First, the compliance program has no overall purpose. Investigators at the lowest level of the organization are permitted to decide the who, what, when and where of investigations. Because investigators believe that their performance

is judged primarily, if not solely, on the number of cases which they handle per year, investigators concentrate on simple cases which usually are of little or no economic significance. Second, policy is reaction rather than action oriented. Field employees apply the "squeaking wheel" approach to establish priorities. Consequently, in most instances, their activities have little lasting impact. Third, there is very little coordinated effort in significant problem areas. Such an effort could have been successful in controlling the growth of illegal operations by bogus agricultural cooperatives. The activities of these bogus co-ops, which have been known to the Commission for over ten years, have continued to grow to the point where a significant portion of all freight shipped in the Southwest is handled illegally by them in open defiance of the Commission's authority. A concerted and coordinated effort when this activity was first recognized undoubtedly could have eliminated such operations.

The General Accounting Office commented in its recent draft report to Congress on the Commission's Compliance and Enforcement activities, that it was unable to find evidence of any specific policy guidance to govern conduct of the enforcement program or any evaluation of the program's effectiveness. The GAO analysis found that the compliance program: (a) accorded disparate treatment to rail and motor carriers; (b) failed to distinguish between chronic and less frequent violators; (c) levied fines that were often minimal and ineffective; (d) failed to correlate the number of seriousness of violations and the amount of fine or forfeiture imposed; and (e) failed to take any enforcement action with regard to many violations. The Panel's interviews support these general conclusions.

The Panel found that the problems created by the policy void are intensified by the present staff structure, since the different bureaus tend to see the

Commission's role in a different light and, consequently, arrive at different conclusions, based largely on parochial interests. Often there is disagreement between the Bureau of Operations and the Bureau of Enforcement as to the type of case to be developed or the action to be taken. Friction sometimes develops between the investigator and the attorney over the adequacy of evidence, the attorney contending that the investigation is not fully supported and the investigator contending that the attorney wants an "open and shut case." Conflicts also arise over the significance of violations. The investigator and the attorney rarely communicate before or during an investigation, and reinvestigations are often required to develop a complete case. This results in wasted resources and a morale problem among the investigators. Greater coordination between the attorney and the investigator at all stages would relieve much of this problem and help to overcome the animosity which often develops between the bureaus under the present organizational structure.

Contributing to the lack of policy guidance and ineffective supervision is the case-by-case approach followed by both bureaus in the performance of assigned responsibilities. Program directors at the regional level and staff officers at the headquarters level are absorbed in reviewing and processing cases, and have too little time to develop policy or to coordinate efforts.

Too much emphasis continues to be placed by the Washington headquarters staff (particularly of the Bureau of Operations) on the quantity of investigations and cases produced as opposed to their value in relation to overall regulatory objectives. Consequently, headquarters and field employees alike are, to a large degree, engaged in a "numbers game" to evaluate and justify performance. Field employees look beyond their immediate supervisors

since the ultimate evaluation of their performance is made in Washington. To rectify this problem, the Panel believes it essential that Washington headquarters staff be removed from the day-to-day processing of compliance cases and from the review of field employee performance (other than the performance of those in a top supervisory capacity).

The Bureau of Accounts has a well-defined program for carrier auditing, but there appears to be an overemphasis on and a misallocation of resources to this function. The consequences of the accounting violations discovered during most audits do not seem as significant as those of other carrier activities which auditors could uncover. Traditionally, auditors have not been directly involved in the investigatory function. In the past, non-accounting violations discovered in the course of an audit were turned over to the Bureau of Operations which then would conduct an investigation. However, in recent years, some auditors have been completing simple investigations and plans have been developed to provide them with additional training in this area. The Panel recognizes the continuing need for a strong audit program, but it has also found that auditors can and should play a greater role in the overall compliance program. For example, the use of computers by major carriers has made it more difficult to detect and develop violations in the rate and credit areas. Few investigators have the accounting or tariff expertise necessary to develop such cases, and auditors with investigative training could play a significant role in this area.

Another weakness in the compliance program is that the field level lacks authority to take final action on routine matters. For example, district supervisors currently submit to the regional office a report and recommendation

on each application for emergency temporary authority. The application with the report and recommendation is then forwarded to the Motor Carrier Board in Washington where it receives a review by an adjudicator before a final decision is made. A 1973 study indicated that the Board follows the initial recommendation in 94 percent of the cases. By placing the decisional authority in the field, the process could be shortened, the basis for decision improved, duplication of effort eliminated and the compliance program strengthened.

In recent years there have been some improvements in the area of delegation, particularly in the Bureau of Accounts which has delegated authority to its regional auditors to review and approve field examination reports and dispose of certain exceptions taken to carrier accounting. The Bureau of Enforcement claims that it has delegated some authority to the field, but the Panel's interviews indicated that every case is still reviewed by the Bureau's headquarters staff and that field attorneys believe the supposed delegations are a sham. In addition they resent the fact that their decisions are reviewed by lower grade headquarters attorneys who, for the most part, lack experience. The most damaging effect of this lack of delegation is that the headquarters staff involves itself in insignificant details to the detriment of policy. The Panel believes that the following are good examples of areas in which authority could be delegated to the field:(a) handling of mail cases and enforcement actions taken through formal Commission proceedings; (b) negotiation of civil forfeiture settlements; (c) approval of emergency temporary authority applications; (d) evaluation of employee performance, (other than supervisors); and (e) conduct of day-to-day operating matters that do not involve top-level policy implications.

All of the problems discussed thus far are aggravated by the multiple channels of command which exist in the present staff structure. There are at least four separate channels of command between headquarters and field staff. Each region has a regional manager with responsibility for most "management" activities but without authority to direct technical programs. Each region also has a regional counsel, a regional director and a regional auditor, each of whom is responsible for his bureau's programs and reports directly to his bureau for substantive matters. This division of responsibility leads to a significant lack of coordination of effort and results in a considerable morale problem in most regions.

The establishment of a full time regional manager responsible only to the Managing Director was an attempt to replace the so-called "two hat" concept and its attendant weaknesses. However, it has placed the program directors, and to a lesser extent the technical field employees, in the position of having to "serve two masters", one in charge of the technical programs and the other in charge of management. Regional managers lack the authority effectively to coordinate or exercise control over technical activities even though often they identify problem areas and opportunities for improvement. Their only impact on the technical program must be accomplished through the program evaluation process or through their reporting channels to Washington, both of which are slow and often ineffective.

It has been almost the unanimous conclusion of earlier study groups, and it is the conclusion of this panel, that a single line of command for field operational and management purposes is required to achieve the maximum coordination and efficiency in administration which is so badly needed in the Commission's compliance program. To achieve such a line of command, the Panel has concluded that the Commission must be reorganized so that

all compliance functions are placed in one office (Office of Compliance). The consolidation of all compliance functions will assure accountability, improve control, provide a proper forum for policy development and program evaluation and permit coordination.

The primary areas of concern are the activities of the Bureaus of Enforcement and Operations. They represent the bulk of the compliance program. Unless the activities of the attorneys and investigators can be coordinated more effectively it will be impossible to strengthen the program. The Panel finds that consolidation of the two bureaus is the only practical way of resolving the conflict.

The Panel recommends that the Section of Audit of the Bureau of Accounts be placed in the proposed Office of Compliance in order to further strengthen the compliance program through greater coordination of audit and investigative activities. The Panel urges that auditors be given a more active investigatory role and be trained in regulatory enforcement. In addition, more use should be made of team investigations both for purposes of efficiency and as cross training for investigators and auditors. The implementation of these goals requires single control and direction.

In conjunction with the reorganization, there must be a reassignment of responsibilities. The headquarters staff should concentrate its efforts on directing overall policy and program development; evaluating the effectiveness of the entire compliance program; preparing guidelines, instructions and training programs for execution of policy; researching new approaches, concepts and difficult points of law in support of field

operations; developing a public information program that will insure that the public is informed of Commission activities; assuring that Commission policy directive and related information are communicated to and understood by all staff levels; and insuring, through the systemized collection and interpretation of information, that developing regulatory problems are identified and brought to the Commission's attention. In order to enable the headquarters staff to carry out its new responsibilities, it must be freed from review of individual cases and supervision and evaluation of non-supervisory field personnel. 2/

The Panel has concluded that the structure of the present field organization is inadequate for the administration of an effective compliance program. The principal inadequacies are: the lack of overall direction; the lack of coordination of effort; and the lack of day-to-day supervision of line employees.

In order to correct the need for high level development of policy and overall coordination and direction of the field staff, the Panel recommends the establishment of four regions, each headed by a regional administrator who would be delegated full responsibility to administer the day-to-day activities of the field staff. In order to assure that lines of communication remain open, and that proper authority is recognized, the four regional administrators should be equal in status to a deputy director of the Office of Compliance and should report directly to the director. The four regional offices should implement and execute coordinated field programs addressed to the local situation but consistent with policy developed by headquarters.

2/ The Panel recognizes that this will require the establishment of a substantial Washington field office.

The present field configuration does not permit adequate supervision due to the number of employees one individual is expected to supervise, the geographic dispersion of the employees, and the inconsistent workload factors. In order to correct this situation, the Panel recommends that additional supervisors be assigned who will not be bogged down with administrative duties.

The Panel has also concluded that in order to redirect resources toward more significant violations, it is necessary to have a focal point for investigative activity. This would assure that the Commission's limited resources would be brought to bear on the most significant violations in a concerted and coordinated fashion. In order to accomplish this redirection of effort, the Panel recommends that the Office of Compliance be divided organizationally at all levels into four sections: audit, enforcement, investigations, and operations. Although each of these four sections will have clearly defined responsibilities, they will work together as one and their activities will be coordinated.

The Section of Operations staff will be primarily responsible for seeking administrative compliance of shippers and carriers. It will also handle informal compliance activity. This will include the activities generally associated with the district supervisors and car service agents. While it will also include some investigative work, the more difficult and time-consuming cases will be handled by the Section of Investigations. The Section of Enforcement will have the same responsibilities which it does today, but the field level will be charged with full responsibility for the handling of cases. The Section of Audit will have its responsibilities broadened

to include more investigative work. The Section of Investigations headquarters staff will participate in identifying problems of significant economic importance and will assist in developing general plans of action to combat them. Each regional investigator will be able to assure coordination of the activities of investigators in his region through assignment of cases. The investigators will be able to devote full attention to casework since they will be relieved of administrative responsibilities.

Although the Panel's review of the Section of Insurance was limited, the Panel did receive complaints concerning apparent duplication of effort in the completion of insurance checks. Under the proposed reorganization the Section of Insurance would become part of the Section of Operations and, to the extent practicable, its activities would be delegated to the field level.

In summary, the reorganization which the Panel has recommended, together with the reassignment of responsibilities detailed herein, would provide an information-based compliance program with decentralized operations and centralized policy leadership.

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PROGRAM DIRECTION

The most pervasive criticism to emerge from the Panel's interviews is that the present program concentrates on economically insignificant cases (unauthorized transportation by small carriers). Major areas of regulatory concern are virtually untouched by our enforcement program. Redirection is imperatively needed.

As was noted in the discussion and conclusions concerning the organizational recommendations, coordination of policy as to the emphasis or direction of the program, is lacking both at the headquarters and the field levels. This is true notwithstanding various references to Commission policy in instructions prepared by the Bureaus of Operations and Enforcement such as the five investigative enforcement priorities. These priorities are stated in the Bureau of Operations Field Staff Manual as follows:

> "In general, compliance and enforcement emphasis must be placed nationwide on the following problem areas, all of which deserve equal priority:"
>
> a. Any and all situations in which it can be shown that inadequate service (either quantitatively or qualitatively) is being afforded the shipper, together with any other complaints that directly affect the normally unsophisticated consumer, such as the individual household goods shipper or small business.
>
> b. Any situation in which there is reason to believe that carriers and/or shippers or receivers are not complying strictly with carrier tariffs, i.e., embracing any type of rebate, concession, device, or other departure from lawfully published and applicable rates, charges, rules or regulations whether they be simple or complex.
>
> c. Any situation involving inadequate car service and/or violation of an applicable Service Order, including failure of carriers and/or consignees to fully comply with Rules 14 and 27 of the Uniform Freight Classification with respect to the complete unloading of rail cars.

d. Failure of any carrier, subject to such regulations, to maintain continuous and appropriate insurance coverage.

e. Any situation involving the performance of substantial unauthorized transportation, whether by an authorized or unauthorized carrier, particularly where other adequate transportation services are known to be available.

Despite these "equal" priorities, the large majority of investigations conducted and cases concluded involve operating rights violations against extremely small motor carriers (less than $300,000 annual revenues), which have little economic impact. Typically, they are easy to develop and are made to satisfy the requirements of the "numbers game." However, employees who conduct such investigations believe that they are following established policy since "unauthorized transportation" is one of the five equal, established priorities.

Our field interviews revealed wide agreement that significant tariff, Elkins Act, unlawful control, demurrage and detention, and Clayton Act violations exist in quantity. The investigatory effort, however, is simply not directed toward developing them, and, in many instances, the "numbers game" precludes investigators from devoting the time necessary for their development.

Moreover, little or no apparent effort is directed toward policing pipeline, water carrier, or freight forwarder violations. For example, during 1975, out of 635 cases concluded, only a few involved water carriers or freight forwarders, and none involved pipelines. It should be noted also that none of these modes is included in the established priorities.

Unanimous agreement was voiced in our interviews that shipper pressure frequently is responsible for significant carrier violations of laws and regulations. Shippers often use their control over traffic distribution to force carriers into violations beneficial to them (e.g., credit

violations, free detention and demurrage, and rebates). Despite widespread recognition of this major problem, little is being done about it. The reasons are varied:

—Cases against shippers are difficult to develop and time consuming and, therefore, are deterred by the "numbers game."

—Cases against shippers require proof of "knowledge and willfulness." That proof usually lies in the shipper's records, which, except for Elkins Act violations, the Commission lacks the authority to search.

—Cases against shippers have been considered futile since the adverse decision in the Hays Roofing case in the 9th Circuit, which the Solicitor General refused to appeal.

Our interviews generally occasioned two specific recommendations. First, the Commission should seek legislation to give our investigators access to shippers' records. Second, field attorneys should be allowed to challenge Hays Roofing by advancing new cases with different factual situations. If these challenges fail, a basis for legislation would exist. The Panel agrees with these recommendations.

The procedures involving the establishment of agricultural cooperatives should be changed so that operations could not begin until the investigation of the cooperative's legitimacy has been completed. At present, operations may commence as soon as a BOP 102 is filed with the Commission. The field staff then begins investigating only to find that the cooperative will refuse access to records or even personal interviews. The situation has deteriorated to the point that ICC investigators have been sued personally for invasion of privacy.

POLICY DEFINITION AND IMPLEMENTATION

The Panel's study pinpointed a number of areas in which considerable opportunities exist for improving the way in which policy is implemented. Most importantly, the implementation of policy must be made uniform. The Panel was particularly disturbed by the lack of consistency in the compliance program as presently administered. The Panel found that the program tends to discriminate against small motor carriers and against those carriers who keep good records (their violations are more easily detectable than those of firms which keep inaccurate or incomplete records). Apparently, violations of bankrupt carriers are not being prosecuted, and investigators are discouraged from pursuing such cases which are said to have no enforcement appeal. Although the Panel received statements in support of the use of civil forfeitures, it could find no evidence of consistency in the application of such forfeitures. Settlements differ according to the geographic location of the carrier, and there is no apparent correlation between the severity or the frequency of a violation and the amount of the forfeiture. There is no recognizable policy for dealing with repeat offenders, and often they receive more lenient fines than first time offenders.

The existence of these disparities is further evidence of the need for an information-based policy, developed and coordinated at headquarters and administered uniformly throughout the nation. It is also evidence of the need to design a new reporting system which would give a much clearer picture of what the compliance program is actually accomplishing.

Two points were consistently apparent in the Panel's review of the compliance program: the lack of available data to evaluate the effectiveness of the program in terms of degree of compliance achieved and the scarcity of

useful analytical data regarding regulatory problems. The reporting systems fail to provide the Commission with information needed to develop new policy, evaluate the effect of existing policy, take forceful enforcement action in a timely manner, or identify or support the need for expanding the Commission's jurisdiction.

It should also be recognized that one of the reasons for the multiple levels of review which presently exist is the deficient reporting systems. The current systems are activity oriented. The only means available for getting a reasonable picture of the regulatory or compliance situation in any area is to review the actual work. This restricts information for program direction and management purposes to case-by-case reviews, observation and discussions. The information flowing upward is controlled almost solely by the man at the bottom of the line. Most assessment is of the man and not the program. Thus, the present reporting systems do not measure accomplishment against areas of greatest need and effective progress towards the resolution of compliance problems cannot be clearly demonstrated. To correct this situation, the Panel recommends that the present reporting systems be revised so that they will be effectiveness oriented.

In a related area, the Panel found that the BOP 30 program is not adequately serving the purpose for which it was designed. There is a general misunderstanding of the purpose of the BOP 30 among the field staff, coupled with a low estimation of its worth. A more effective procedure needs to be developed which will identify repeat sophisticated offenders, and this information should be disseminated throughout the Office of Compliance organization.

Even assuming that the BOP 30 could be made effective in identifying patterns of violations, a better method should be devised to determine the number and types of investigations or cases that are pending or have been concluded. Presently, it is very difficult to quickly determine the age or status of pending complaints, investigations or cases. If the workload is to be properly controlled and directed, much more information must be developed and made available to the program directors. In effect a method analogous to the "central status" system, controlling the Commission's formal caseload, should be developed.

The Panel has also concluded that an internal communications program should be established for the timely dissemination of Commission policy, directives, and actions, and general information on industry matters. The Panel found that, although a system of sorts is in place for the dissemination of Commission policy, guidelines, actions and case precedents, there is virtually no regard for timeliness nor for implementation of directives. Further, because of the absence of frequent communications between the field and headquarters, the public is not provided prompt enforcement or equity of treatment in the administration of Commission regulations. Field offices operate in a vacuum, often pursuing obsolete policy and directives and, in some instances, developing their own. Traffic World magazine frequently provides more timely and understandable information to the field on the workings and directions of the Commission than the Commission does itself. To eliminate these communications problems, the Panel recommends that a central point of coordination of information for the field be established and that it be charged with [illegible]ility to obtain all appropriate information for timely dissemination to the field; that a frequent schedule of working conferences between

field and headquarters staff be established; and that necessary communications equipment for timely dissemination of information be installed between the field and Washington.

The Panel's review of policy implementation pointed out the need for regular follow-up procedures. According to the information received by the Panel, in the great majority of cases, little effort is made to determine whether offenders, once they have paid a fine or forfeiture, simply continue their illegal activities. The Panel was told that the Bureau of Operations has a procedure for follow-up, but it is rarely used. The Federal Trade Commission had made effective use of follow-up compliance reports, and the Panel recommends that consideration be given to the use of such reports.

The Panel's interviews suggested that often there is an untapped compliance resource at the state level. While the Commission was aggressive in securing cooperative agreements with each state, the use of such agreements has been limited to arrest reports and road checks. Information supplied to the Panel indicated that the opportunities vary rather widely, state by state. Several states have larger investigative staffs than the Commission. Some have very active enforcement programs of their own, while others do not have the funds to operate an effective program. Still others have regulatory bodies so deeply involved in politics that coordination of activities would not be advisable. The Panel recommends, therefore, that those opportunities which do exist be fully explored and a concerted effort be made to coordinate activities in those states in which it is concluded that such coordination would be beneficial.

ALTERNATIVE PROCEDURES

The Panel's investigation revealed widespread differences of opinion as to the efficacy of the Commission's present enforcement procedures. Since the subject proved too complex for the formulation of final recommendations within the time frame of this report, the Panel decided, reluctantly, to recommend further review.

Particularly troublesome is the question as to the efficacy of civil forfeiture settlements. Field personnel were generally in agreement that carriers view civil forfeiture payments largely as a cost of doing business rather than a serious deterrent to unlawful activity. Bureau of Enforcement attorneys contend that the use of civil forfeitures has been a most effective compliance tool. They cite the large number of cases processed and the sizeable sums collected as evidence of the success of the program. The Panel recommends that a thorough evaluation be made of the use of civil forfeitures. The review should attempt to determine the following:

--Are civil forfeiture settlements too low to be effective?

--Do carriers view civil forfeiture payments as costs of doing business?

--Do civil forfeiture settlements average higher or lower than court imposed fines?

--Is there now, or should there be, a relationship between the amount of the civil forfeiture and the amount of revenue involved as a result of the illegal activity?

--Should rail investigators have an input as to the level of civil forfeitures assessed against railroads? (Motor carrier investigators have such an input, and the Panel has been unable to find any justification for the disparity.)

--Should the Commission seek additional authority to make the civil forfeiture procedure available for a broader range of violations? (The Panel supports the Bureau of Enforcement's request for additional authority in this area.)

In its study of the enforcement methods now utilized by the compliance program, the Panel became aware of an obvious and pressing need for some form of summary enforcement procedure for handling minor violations. The present choice is limited to taking no formal action or raking a "Federal case" out of minor violations. Because of the "numbers game," minor matters often are made into formal cases which impede the entire enforcement operation. Corrective action may require legislation.

The opinion was expressed repeatedly that more use should be made of suspension and revocation against motor carrier violators. This view generally was expressed in conjunction with the view that, in many cases, civil forfeitures are not effective. The field staff perceives a reluctance on the part of the Commission to order suspension or revocation, with too much weight being given to the potential effects of the loss of one carrier's service to the shipping community it serves. Serious consideration should be given to greater use of this sanction for flagrant and repetitive violations, at least for probationary suspension periods.

The Panel also recommends that the expanded use of other administrative remedies be considered. The Federal Trade Commission, Federal Communications Commission, and the Civil Aeronautics Board rely quite heavily on "show cause" and "cease and desist" orders, for example. These agencies apparently have little trouble in persuading the Department of Justice to handle actions to enforce their orders in cases which Justice probably would have refused to handle initially. The inconsistency of the Justice Department's acceptance of Commission cases is a continuing problem and is one reason for the apparent variance in the Commission's overall application of remedies. This recommendation is seen as one way potentially to overcome much of that problem.

PERSONNEL

Many Bureau of Operations employees stated that they have difficulty in understanding the actual channels of authority and responsibility. At any given time, conflicting instructions may be received from the Officer in Charge, the Assistant Regional Director, the Regional Director, and from headquarters.

We have commented elsewhere in this report on the deleterious effects of the so-called "numbers game"; it is, at best, a poor measure of employee performance. However, the performance rating and promotion problem has even more serious ramifications. Most employees believe that too little consideration is given regarding the difficulty of work performed or its contribution to the compliance program. There is no recognition given employees who are assigned to areas with heavy workloads or difficult enforcement problems. Most of the employees believe that someone who is not directly familiar with their contribution is responsible for their performance ratings. Employees generally are left to their own devices and are convinced that as long as they "keep their numbers up", a relatively easy task for most of them, they will "get along."

There is a general belief, however, that promotions are not open to all employees on an equal basis, even when the case "quota" is made or exceeded. Morale among older employees greatly suffers from this apparent anomaly, and many believe that selections are made before vacancies are announced. Among new employees, the "numbers game" itself creates substantial morale problems since the struggle to make "numbers" is more difficult due to lack of experience and inadequate training or personal guidance.

A re-evaluation of the current problem of supervision,

rating and promotional opportunity is imperative if morale and the effectiveness of the compliance effort are to be improved.

Assuring that an employee's immediate supervisor assumes primary responsibility for ratings would be a positive first step. In addition, the supervisor should be required to discuss the rating with the employee, pointing out his strengths, weaknesses, and areas of needed improvement. This in itself will require close supervision of employees and create opportunities for observation of performance.

TRAINING

Some improvements have been made in the Commission's training programs in recent years; nevertheless, much remains to be accomplished. The Bureau of Operations has developed a one-year program based on a concept of intermodal training for all of the bureau's technical field staff. After a brief indoctrination period in Washington, the trainees spend portions of the year working directly with district supervisors, car service agents, and motor and rail investigators. At the conclusion of the year they are assigned to one of the specialty positions. While this approach seems reasonable in concept, the Panel heard severe criticisms of the program from employees who have completed it. A major complaint was that new employees are not able to grasp such a broad spectrum of the Commission's activities in such a short time frame and that such training does not give them sufficient background to perform adequately in any of the specialty areas.

The Panel found that the present program emphasizes intermodal training to the detriment of an employees prime responsibility. In theory it would be preferable to have a fully trained intermodal staff; however, only a select few can ever be expected to gain the knowledge and experience to make them effective in dealing with all modes. The program should concentrate on fully developing employees in specialties before intermodal training is begun.

There is little provision in the training program for any type of continuing education or refresher courses for more experienced personnel. Most seasoned employees have had no training in years, and feel that the demands now being made on them are unreasonable since such demands involve working in unfamiliar areas. The example cited most often is the pressure put upon car service agents

to perform investigative work although they have had little or no training in this area. Many other employees are expected to perform activities in areas outside their specialty without adequate training. Such activity usually results in a waste of time.

Experienced employees criticize the training program because they believe that providing training to a new employee hampers their efficiency to perform their regular tasks. It is felt that, under the present arrangement, neither job is performed well.

The Panel believes that the size of the field staff and the number of new employees each year justifies a full-time training effort, not only at headquarters, but at the field level. This not only would relieve line employees of much of their training responsibilities but would provide for coordination of the program.

PARA-PROFESSIONALS

In accordance with the Commission's directive of August 6, 1975, the Panel has reviewed the possibilities for use of para-legals in the Bureau of Enforcement. The Panel has concluded that the nature of the work which must be performed by Bureau of Enforcement personnel requires legal training and experience plus admission to the bar. These employees must review investigative reports and documentary evidence in each case. In addition, they must be prepared to proceed with the extensive pre-trial discovery work which is sometimes required.

Under the restructuring plan recommended by the Panel, the functions now conducted by the Bureau of Enforcement would continue to be performed by attorneys. however, there would be considerable opportunity in the new Bureau of Compliance for para-professional and part-time employees. Bureau of Operations technical personnel are now required to spend increasingly large amounts of time on Amtrak checks, bus checks, and consumer inquiries. This work does not require or make proper use of their expertise and is considered degrading and demoralizing. These tasks can be performed by personnel at much lower grade levels with a minimum amount of training. Para-professionals should also be employed for routine office work, including answering, or performing preliminary screening of, the growing volume of consumer inquiries. In this way, technical personnel could be relieved of time-consuming functions which now waste their expertise. The Panel believes that this is an urgent problem and should be addressed even if it means that vacant technical positions are converted to this use.

PUBLIC INFORMATION

The field staff was nearly unanimous that, in the hinterland at least, the Commission's present public communications system requires substantial improvement. Commission decisions and actions of newsworthy value to the local area of impact are seldom written in an interesting style or disseminated in a timely manner. The first news of an event of potential local interest usually is discovered by the field staff in trade publications long after the item would have been considered by the local media to be of timely interest. Many instances were cited where news releases relating significant Commission actions either were released or received several days or even weeks after the event occurred. Field personnel stated that they are frequently embarrassed by media inquiries concerning events of which they have no knowledge. Thus, the field offices can be of little service to the Commission in maximizing the potential benefits of timely release of information and, consequently, are viewed as inefficient. Local news coverage of significant Commission decisions, if timely received and properly disseminated to the media, could play an important role in the Commission's compliance program.

The existing public information program appears to be fragmented, with no single source responsible, as evidenced by the authority of the Bureau of Enforcement to release information independently on concluded cases. The problem is further aggravated when personnel handling news media relations do not provide the media with facts presented in a way that is useful for media purposes. (Put bluntly, little good P.R. is likely to result from handing a local business editor or reporter a release couched in such "legalese" or "bureaucratese" which scarcely can be interpreted or made "newsworthy.")

The Panel also found that there is no effective ongoing information and education program at the field level to inform the general public of the mandate and services provided by the Commission. Information for use by civic organizations and individuals should be available but is not, and public information brochures covering the various aspects of the Commission's operations are virtually non-existent.

The major reorganizations undertaken by the Commission since 1961 affecting the Bureaus of Accounts, Enforcement and Operations and the field establishment include:

1961 - Reorganization at Commission level. The reorganization focused almost entirely on the Commission level but did provide for delegation of routine matters to staff and specifically certain types of enforcement cases to the Director of the Bureau of Inquiry and Compliance.

1963 - Reorganization of Field Staff. The field staff was divided into seven regions for more efficient operations, and full time regional managers were created for management of field operations (implemented January 1, 1964).

1965 - Headquarters Reorganization. A consolidated Bureau of Operations and Compliance was created, replacing two former modal bureaus (Motor Carriers and Water Carriers and Freight Forwarders), and certain intermodal regulatory responsibilities were placed in a new bureau. The Bureau of Accounts was expanded to include reports and statistics (transferred from Economics). Additional authority was delegated to the field establishment in the field program.

1967 - Transfer of staff and functions to DOT. The Commission restructured its remaining organization after the transfer of 430 positions and the safety functions to DOT. The Bureau of Operations was created by consolidating the remnants of the former Bureau of Operations and Compliance and the former Bureau of Safety and Service. The field organization was further restructured by consolidating 7 regions into 6 and by reducing the 13 technical operating districts to conform with the six-region pattern.

Since 1967 there have been only minor interral refinements in the bureau and field structures. A more detailed analysis of the development

of the present bureau and field structure follows.

I. BUREAU OF ACCOUNTS

The Bureau of Accounts' organization and functional assignments have been left relatively unchanged since 1960. The Bureau then, as now, performed the accounting, cost finding and valuation functions to bring about accurate, uniform and comprehensive disclosure to the Commission of carriers' financial data. It maintained a field staff of approximately 60 employees engaged in the examination of accounts, records and financial statements to ascertain compliance with the Commission's accounting and related regulations. The field staff was then organized into three field districts, each under the supervision of an examiner-in-charge.

As to the headquarters structure of the Bureau, the BAH Study recommended eliminating the Bureau and transferring its functions to (1) a proposed Bureau of Safety and Compliance which would include a Section of Accounting and the headquarters staff of a Section of Field Service, and (2) a proposed Office of Transportation Policy and Analysis, which would include Sections of Valuation and Cost Finding. The proposals of the Practitioners' Report were not as far reaching. It recommended that the bulk of the Bureau's headquarters staff and functions be incorporated into a new "Office of Regulation" and its identity be changed to the Bureau of Accounts and Statistics. Apparently the Cost Finding staff and functions were to be transferred to a Section of Economic Policy under the Secretary.

None of the foregoing proposals was approved by the Commission, however the entire matter of headquarters office and bureau realignment was assigned to the Commission's Policy and Planning Committee in 1964 and docketed as project PAP #2-64. The Committee proposals included

recommendations to expand the Bureau of Accounts to include a Section of Reports and consolidate therein all functions having to do with examination of carrier reports, compilation of statistical data, and processing of waybills. The Commission completed action on such proposals and approved a headquarters reorganization plan on April 27, 1965. That plan left the Bureau intact but established the Section of Reports essentially as recommended by the Policy and Planning Committee. It also abolished the Section of Field Service and transferred its functions to the Director's Office and the Section of Accounting. The Bureau's headquarters organizational structure was not affected by the realignment resulting from the establishment of the Department of Transportation in 1967, but subsequent internal refinements were made, including: the establishment of a Section of Financial Analysis (transferred from the Office of Proceedings in 1967); Section of Audit in 1971; and the consolidation of the Sections of Cost Finding and Valuation coupled with the transfer of the depreciation functions to the Section of Accounting in 1973.

With respect to the field, the BAH Study proposed to transfer the Bureau's entire field staff to an Office of Field Operations. All Commission field staff and operations were to be organized into nine uniform regions, each to be headed by a regional director in charge of management and program direction. Each regional headquarters office would have included a regional supervisor of accounts and records to provide technical supervision over the auditors and accountants. The Practitioners' Report contained similar proposals although not spelled out in the same detail as the BAH Study, viz., the Bureau's field staff would be organized into nine uniform regions and placed under the direction of regional managers who would be responsible for all managerial and

and regulatory activities within the region. The Managing Director's Proposal of July 24, 1961 for Field Reorganization would have transferred the Bureau's field staff to the Office of the Managing Director. All Commission field staff and activities (except hearing examiners) would have been organized into six uniform regions, each headed by a regional manager responsible for both management and program functions. Regional managers would have reported to the Managing Director.

None of the foregoing proposals was approved by the Commission. However, on May 31, 1962 a modified field reorganization plan was proposed by former Commissioner Hutchinson which led to the present field organization. Under his plan the Bureau retained its field staff and the technical supervision of it. The field staff was organized into seven (later six) uniform regions. A regional auditor position was established in each of the regions to provide supervision over the Bureau's field staff and activities. Under this plan Regional Auditor's reported to regional managers with respect to management functions and to bureau headquarters with respect to technical functions. In 1971, the Bureau established a Section of Audit which was given supervision over the field staff. The Bureau has moved since then to delegate additional authority to Regional Auditors in the area of approving examination reports and corresponding with the carriers concerning exceptions to their accounting practices. The overall concept of field organization, as finally approved by the Commission is more fully discussed under the heading "Field Establishment" which follows herein.

II. BUREAU OF ENFORCEMENT

The Bureau of Enforcement, which was formerly known as the Bureau of Inquiry and Compliance, has undergone some significant organization and functional changes since 1960. At that time the Bureau's assigned

responsibilities included investigating violations, prosecuting violators in court, and assisting the Department of Justice in prosecutions under the IC Act, the Elkins Act and the Clayton Antitrust Act. It also participated in Commission proceedings, when authorized, for the purpose of developing facts and issues. The Bureau's headquarters staff was organized into three sections, Motor Carrier Enforcement, Rail, Water and Forwarder Enforcement, and Investigations.

The BAH Study recommended the creation of a Bureau of Enforcement to perform essentially the same functions as the Bureau of Inquiry and Compliance. Its responsibilities would be expanded to include railroad safety violations. These proposals were later adopted. The headquarters staff was to be realigned into two sections, Prosecution and Proceedings Support. The Bureau's field staff was to be incorporated into the nine region plan described earlier under the Bureau of Accounts, and placed under the supervision of the regional directors and the proposed Office of Field Operations. These proposals were not adopted by the Commission.

The Practitioners' Report would have incorporated the Bureau's headquarters organization into a proposed Office of Regulation and retitled it the Bureau of Compliance. In addition, it proposed to integrate the Bureau's field staff into the nine region set-up discussed earlier under the Bureau of Accounts. These proposals were not adopted by the Commission.

In 1961, the Commission approved a major reorganization plan which included delegation of certain functions to the staff. The Director of the Bureau of Inquiry and Compliance was authorized to institute civil injunction proceedings involving motor carriers and to make direct recommendations to the Department of Justice or any U.S. Attorney for institution of various criminal prosecutions or civil forfeiture proceedings.

The Field Reorganization of 1963 retained the field staff in the Bureau. However, Regional Attorneys (now Regional Counsels) were designated as program directors for all of the Bureau's field programs (including special agents). Their geographical work areas continued to follow the 13 districts of the Bureau of Motor Carriers but the 13 districts were aligned to fit within the seven-region pattern.

Under the Headquarters Office and Bureau Reorganization of 1965 the Bureau of Inquiry and Compliance was changed to the Bureau of Enforcement. All legal enforcement functions of the former Bureau of Safety and Service were transferred to the Bureau of Enforcement with the specific instruction that they be decentralized to regional attorneys in the field.

In the organizational restructuring necessitated by the creation of the Department of Transportation in 1967, the investigative functions and staff (special agents) of the Bureau were transferred to the newly created Bureau of Operations. At the same time the Bureau's regional attorneys, who previously were assigned to the 13 Bureau of Motor Carriers districts, were reassigned to six, to conform with the revised regional structure. At the same time the title regional attorney was changed to regional counsel. The only significant change in the Bureau organization since that time has been the establishment of a Special Projects Staff in the headquarters office.

Currently, enforcement actions against railroads are handled by the Bureau's headquarters staff. Actions against motor carriers are handled by the regional counsels in the field. However, civil forfeiture settlements handled by regional counsels, are not made until after headquarters concurs in the proposed settlement. Enforcement actions through formal Commission proceedings also are handled by headquarters staff.

III. BUREAU OF OPERATIONS

The Bureau of Operations is the successor bureau to the former Bureaus of Motor Carriers; Safety and Service; Water Carriers and Freight Forwarders; and Operations and Compliance. It has undergone more extensive changes than any other Commission organizational unit since 1960, due principally to the transfer of safety functions to the Department of Transportation.

In the 1960's the several modal bureaus named above had approximately 625 field employees, accounting for nearly 80 percent of the Commission's total field forces. The staff consisted primarily of safety inspectors, motor carrier district supervisors, car service agents and rate agents. They were assigned to eight or more overlapping and inconsistent geographic patterns for operating purposes. As discussed later herein, nearly 37 percent of the Commission's field staff was transferred to the Department of Transportation in 1967, primarily in the functional areas of railroad and motor carrier safety.

The BAH Study proposed a Bureau of Safety and Compliance to provide functional support for all safety compliance and service assurance activities and to be responsible for routine compliance activities in the fields of rates, operating authorities and accounting systems and reports, certain of which were then being performed by the three separate modal bureaus. The proposed bureau was to be formed by consolidation of the bulk of the Bureaus of Safety and Service, Motor Carriers, Water Carriers, and Freight Forwarders, and Accounts. The field staffs of the three modal bureaus were to be incorporated into an Office of Field Operations and placed under the full operational direction of the nine regional directors earlier discussed.

The Practitioners' Report recommended creation of an Office of Regulation which would direct and coordinate all regulatory functions. All safety and compliance functions performed by the three modal bureaus were to be consolidated in a single Bureau of Operations (and to a lesser extent Bureau of Compliance) under the proposed Office of Regulation. With respect to the field, the Practitioners' Report would have integrated all field staff and all activities of the three modal bureaus under nine regional managers who would report to a General Manager as to managerial duties and to a Director of Regulation as to regulatory duties. Neither the Booz, Allen and Hamilton Proposal nor the Practitioners' plan was adopted by the Commission.

In 1964, field staffs of the three modal bureaus were aligned under a uniform seven-region concept for management purposes and made subject to the direction of regional managers with respect to management duties only. The Bureau of Motor Carriers continued to utilize a 13 district operational pattern in the field, each supervised by a district director. The Bureau of Water Carriers and Freight Forwarders maintained four district offices, while the railroad programs were generally aligned to conform with the seven region concept. A fuller discussion follows under the heading "Field Establishment".

In 1964, the Policy and Planning Committee considered proposals for headquarters reorganization. This project was docketed as PAP #3-64 "Headquarters Office and Bureau Realignment". The proposals would have, in effect, consolidated the three modal bureaus into a single Bureau of Safety, Service and Compliance, much the same as the Booz, Allen and Hamilton and the Practitioners' studies had

recommended. This proposal was considered by the Commission and resulted in the creation of a Bureau of Operations and Compliance in 1965. The new bureau was formed primarily by consolidation of the Bureau of Motor Carriers, the Bureau of Water Carriers and Freight Forwarders plus the Explosives and Other Dangerous Articles functions transferred from the Bureau of Safety and Service. The Bureau of Safety and Service was retained as a separate bureau but retitled "Bureau of Railroad Safety and Service".

In 1966, the Policy and Planning Commitee was assigned responsibility to study and determine the impact of the proposed Department of Transportation on the Commission and to provide appropriate recommendations for organizational restructuring. This project was docketed as PAP #7-66, "Proposed Department of Transportation - Effect on Commission Organization". The Department of Transportation Act, P.L. 89-70 transferred the Commission's rail and motor carrier functions to DOT, necessitating the transfer of 430 positions, representing 17 percent of the Commission's total staff. The Committee considered several alternatives including; (1) elevating the Section of Car Service to bureau status; (2) transferring the Section of Car Service to the Bureau of Operations and Compliance; (3) merging the bureau's of Accounts, Enforcement, Operations and Compliance, and Traffic, and the Section of Car Service into a single Bureau or Office of Regulation fashioned somewhat along the lines of the Office of Proceedings with all field forces consolidated into a single staff under such bureau or office; and (4) leaving the headquarters bureau structure essentially intact but consolidating the field offices into a single staff under the direction of five regional directors who would report to the Managing Director who would serve as the channel through which the regulatory bureaus would report to the Chairman. The Commission completed action

on the proposals early in 1967 and approved creation of the present Bureau of Operations by consolidating the remnants of the former Bureau of Operations and Compliance and the former Bureau of Safety and Service. The field organization was further restructured by consolidating seven regions into six and by reducing the 13 technical program operating districts (followed by the bureau of Operations and Compliance and the Bureau of Enforcement) to conform to the new six-region pattern. The regional directors were given responsibility for supervision of the Bureau's field programs at the field level including motor, rail, water, and freight forwarder.

There have been no major changes in the Bureau of Operations organization since 1967. However, interral refinements have been made at headquarters to consolidate the Water Carrier and Freight Forwarders functions with the Director's Office and to provide for a Passenger Service Branch in the Section of Railroad.

IV. FIELD ESTABLISHMENT

Over the years, the Commission's field organization has been a matter of continuing concern, not only to the Commission, but to the Office of Management and Budget (formerly Bureau of the Budget) and to Congressional committees, as well. It has been the subject of considerable attention and criticism in several studies of the Commission's organization, operations and procedures conducted by professional management consultants and advisory groups.

In 1952, the Wolf Management Engineering Co., in a report prepared for the Senate Committee on Interstate and Foreign Commerce, pointed out [illegible] weaknesses in the Commission's field establishment. It was critical of the large volume of matters referred to Washington for action that could be disposed of by field

personnel; the lack of coordination among the several field activities; and the long distance supervision by and infrequent personal contact between management and employees stationed in the field.

In 1954 the first Managing Director submitted to the Chairman a plan for grouping all field offices into ten regions and for realignment of functional realtionships between Washington and the field. This plan was not approved. However, on August 2, 1955, the Commission approved a modified proposal to designate the Bureau of Motor Carriers' district directors as regional managers with "responsibility directly to the Managing Director for performing administrative duties and conducting operations concerned with administering the field offices and personnel." This later became commonly known as the "two-hat" field organization concept.

During 1960, and following, several detailed studies of the Commission included a review of its field organization and operations. The recommendations of two of these studies, the BAH Study and the Practitioners' Report, were generally endorsed by James K. Landis in his report on Regulatory Agencies to the President-Elect, released during December, 1960. Another report prepared by a special study group for the Senate Committee on Commerce, the "Doyle Report", dealt with transportation policy and with the organization of the several Government agencies having transportation responsibilities. The General Accounting Office and the Civil Service Commission also conducted studies which included comments and recommendations concerning the field organization.

These studies and reports, while differing in purpose and scope, pointed up similar inadequacies and inefficiencies then existing in the Commission's field organization and operations. These included:

(a) Lack of central direction and coordination of activities in the field;

(b) Insufficient delegations to the field level to perform routine functions;

(c) Ineffective supervision and inefficient use of manpower and resources in the field; and

(d) Overlapping geographic patterns utilized for operations by the several bureaus with field staffs.

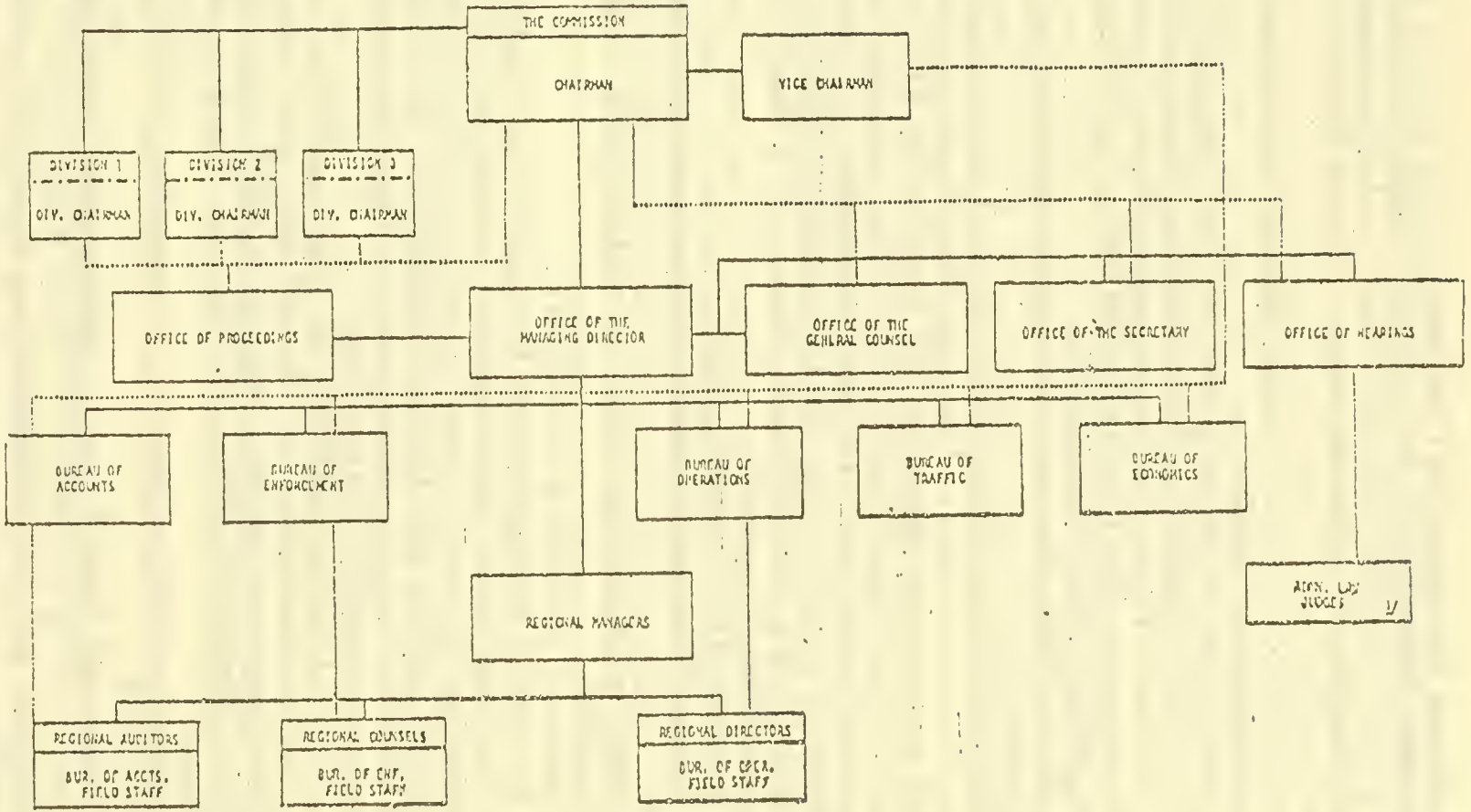
Although differing in some respects as to the best plan of organization, the principal recommendations contained in practically all of the major studies called for a single line of command over the field forces for both management and operational purposes. This became the central issue in deliberations that followed both at the staff and Commission levels. This issue concisely summarized in the following excerpt from Commissioner Hutchinson's memorandum of May 31, 1962, which eventually led to the Commission's present field structure:

> "...The central issue in reorganization of the field appears to be assignment of responsibility for execution of technical field programs.
>
> "The field organization is the despair of all who have studied it. Going back to the Wolf Report in 1952, all the experts have recommended essentially the same type of realignment —a single field force under one manager (rather than five) organized into appropriate regions with responsibility for planning, coordinating, and executing Commission field programs. I am convinced that this approach is sound and I believe that perhaps a majority of the Commission holds this view.

Commissioner Hutchinson then proposed a compromise plan of field organization which was adopted, effective January 1, 1964. The plan provided for full time regional managers responsible to the Managing Director, essentially the same structure that is utilized at present. However, as a result of the establishment of the Department of Transportation in 1967, the Commission's safety functions and over a third of its then existing field staff were transferred to that new Executive Department. The field organization was refined at that time by consolidating seven regions into six and by reducing the 13 technical program operating districts to coincide with the six-region pattern. The rail economic functions (principally car service) formerly supervised by a regional program director for railroads, were placed under the direction of the regional directors of the Bureau of Operations. The present field structure and regional patterns are shown in Exhibits Nos. 1 and 2 hereof.

EXHIBIT 2

INTERSTATE COMMERCE COMMISSION



Mr. BROWN. Thank you, Mr. Chairman.

Chairman Stafford, for a few minutes I would like to address the development of the staff study panel report on the Commission's compliance programs and other documents relating to the material in this report.

If you could, could you tell me when the study was undertaken?

Mr. STAFFORD. July of 1975.

Mr. BROWN. Did you believe at that time that there might be a problem in the functioning of the Commission's compliance program?

Mr. STAFFORD. Well, we have had some complaints, of course, and it was for this reason that I finally decided that it was necessary for us to start getting into this whole question.

Mr. BROWN. Were there any other reports submitted that led you to belive this?

Mr. STAFFORD. Well, not a report as such, but I had asked some of the staff to give me a summary of what they found as they looked at the material we had in the office alone and based on that I had suggested that perhaps we better have this Blue Ribbon Committee to go into it, to go into the field to talk to those participating in the field and to make sure that we had as full a record as we possibly could have.

Mr. BROWN. Was one of those reports called "A Study About the ICC's Compliance Program"?

Mr. STAFFORD. That is the study paper; yes.

Mr. BROWN. When was this study or paper presented in final form to you?

Mr. STAFFORD. It was right before we started in with the Blue Ribbon Committee.

Mr. BROWN. A few weeks, a few months?

Mr. STAFFORD. I would guess that. My recollection of the time frame in there is—keep in mind that we had been working for quite a period of time on those 60 or so proposals in the original Blue Ribbon Committee report, and we were holding conferences on those quite often after I had asked a special commitee of three Commissioners to really get into it, so we have had a lot of activity.

Mr. BROWN. Chairman Stafford, can you identify the document which you have stated stimulated the staff study panel review of the compliance program as the study entitled "A Study About the ICC's Compliance Program"? When did you ask that this study be undertaken?

Mr. STAFFORD. Could you give me a little more than just what you are saying on this?

Mr. BROWN. All right. It was my understanding that this study or paper, as you call it, was entitled, "A Study About the ICC's Compliance Program," and was started some time in early 1974. Would that be correct?

You now have a copy of the report before you.

Mr. STAFFORD. Yes. This is the one that I guess I call the Arnold Smith report.

Mr. BROWN. Was Arnold Smith the head of this panel?

Mr. STAFFORD. No; Arnold Smith was an employee in the Commission that we had a great deal of faith in; he had a great ability. In fact, I believe he previously was an investigator from the Hill on this subcommittee. He was on your subcommittee at one time. He had been

employed by your subcommittee, Mr. Chairman, and then we had hired him to come to the Commission. He is an extremely able person and so we asked him——

Mr. BROWN. May I pin you down on the date you thought this study was begun or when you sent out a directive to have it done?

Mr. STAFFORD. I don't have that date.

Mr. REBEIN. We don't have the specific date. We can get you one. It took approximately 1½ or 2 years because the analysis was extremely detailed. It was strictly a statistical analysis.

Mr. STAFFORD. This was just statistical based on——

Mr. BROWN. Chairman Stafford, did you ever discuss the conclusions or the recommendations in this report [Smith report] with other members of the compliance study panel—that is, the study panel on regulatory reform which did the compliance report [Fitzwater report]? Did you ever discuss this report's conclusions and recommendations with other members of the Commission?

Mr. STAFFORD. All I did was ask the managing director to let's get going on a blue ribbon study on this thing now so that we can try to verify those areas that may be right or wrong. I realize now that all of this has hit the press and everybody thinks, well, somebody has forced them into doing something, and that is not right. This was strictly an inhouse tool for management purposes, and because of this, we were trying to arrive at our decision just as we did under the regular blue ribbon program and just as we hoped to continue to do in any other area that we may find that we need some updating or change.

Mr. BROWN. Commissioner Corber and Commissioner O'Neal, did you ever see a copy of the document the chairman now has on the table?

Mr. O'NEAL. Yes, I have seen it—I have read it. I am not sure when I saw it. I cannot recall when I saw it but I think it was—I guess about the time that the initial blue ribbon report was prepared.

Mr. BROWN. Mr. Chairman, at this time I would like to introduce into the record appropriate excerpts from this report.

Mr. Moss. Under the previously granted unanimous consent, the material will be indentified by staff and entered in the record at this point.

Mr. STAFFORD. Might we suggest you just put the whole report in. If you are going to put excerpts in, then perhaps you ought to put the whole report in.

Mr. BROWN. I would like to have permission to put the entire study in the record.

Mr. Moss. Well, let me ask this question. Has the staff reviewed this report?

Mr. BROWN. The staff has reviewed the report, Mr. Chairman.

Mr. Moss. Do you feel that the report in its entirety is relevant and correct?

Mr. BROWN. I feel that not only is the report relevant and correct but that the Commission's concern that the entire report be entered into the record is reasonable.

Mr. STAFFORD. My only concern is that you may pick out one or two things that you consider to be very bad or something whereas we think we were just trying to get to a basis—something to work on.

Mr. Moss. In order that the record be accurate, we will enter the entire report in the record.

Mr. BROWN. Thank you, Mr. Chairman.

[Testimony resumes on p. 271.]

[The report follows:]

A Study About the ICC'S Compliance Program

INTRODUCTION

This is a study "about" the compliance program. It is not a study "of" the compliance program, only a portion of it. The work of obtaining compliance with the Interstate Commerce Act, with related Acts, and with the Commission's rules and regulations in furtherance of national transportation policy--voluntarily and otherwise--is a multi-faceted endeavor that runs the gamut of regulatory administration, from simple telephone calls to highly complex adversary proceedings. Hundreds of dedicated men and women are engaged in this program at Commission Headquarters and field units throughout the United States. It is not limited merely to investigators or lawyers; nor is it the exclusive domain of a single bureau or particular personnel grade levels. It directly or indirectly concerns most of the Commission's endeavors and most of its employees.

This study concentrates on one facet of the compliance program--that beginning with the discovery and reporting of alleged violations, through the termination of court enforcement to prevent their reoccurrence. It looks at the way certain key aspects of that part of the compliance program pipeline function.

The study also concentrates on motor carriers. Areas of rail compliance were examined, but a more extensive review of its special

features will have to be undertaken separately before any results become meaningful.

Calendar Year 1972 was selected as the study period, and available Bureau of Enforcement files in Washington digested. Almost 800 cases were read, comprising 1,047 respondents whose violations were reported with evidence. BOp 26 reports without evidence, on file in regional offices for the period, were read too. There were 1,163 respondents considered in those investigations. Pertinent information from all of the documents was recorded on data sheets, which had been devised in conjunction with the Bureaus of Operations and Enforcement. This information then was tabulated and analyzed.

In the process, mistakes were made. The heavy volume of items alone, compounding inevitable human error, produced its normal share of flaws. Nonetheless, the sample was significantly large enough to offset these miscalculations without seriously diminishing its validity or message.

This study was designed solely for internal use, as a fulcrum for constructive internal change. It was not designed to stir controversy or take sides in one--outside or inside the Commission. Nor was this study designed to relate the good things about the Commission's innumerable compliance achievements. Well-deserved plaudits concerning them are a matter of record already. Thus, instances could have been cited to demonstrate some outstanding

enforcement actions or important accomplishments that occurred during the year. These--along with lesser results--were all amalgamated into the main body of case statistics. But, examples selected to highlight this data were more reflective of its general thrust.

This study, therefore, focuses on compliance problems--where improvements might occur--where new emphasis might be desirable--where new, perhaps better, answers might be found. Its purpose is not to provide a recital of "on the other hands" that grace so many comparable presentations. Such balance will come next; in discussions with officials and staff of the Bureaus concerned; in formulating revisions and differing perspectives where appropriate; in leaving no relevant points of view unsaid; in giving proper depth to the facts.

This study, in short, is to serve as a catalyst for future reforms, even where now they might be deemed unthinkable, unpalatable or unwise. There are no quick solutions in this very diverse and judgmental field. There are no easy ways to accomplish its law-abiding mission. But, hopefully, the kind of dialogue this study was meant to generate will help the Commission fashion further betterments from within and help it to continue reaching ever new plateaus of progress for the public interest.

The panel wishes to express its appreciation to the Bureaus of Operations and Enforcement for their special assistance and co-operation over these many months. It also wishes to acknowledge the help rendered by the Section of Systems Development and three private firms: Information Consultants, Inc.; On-Line Systems, Inc.; and Compu-Serv Network, Inc.

THE COMPLIANCE STUDY PANEL

G. Huntington Banister
Wilson M. Carr III
Frampton E. Ellis III
Pearl D. Fielders
Robert H. Hadley
Frank D. Martin
Agatha Mergenovich
Dorothy S. Rice
Carol O. Rowe
S. Arnold Smith

A SUMMARY ABOUT THE ICC COMPLIANCE PROGRAM

. . . It primarily investigates complaints about small, licensed carriers, allegedly engaged in unauthorized transportation, many of whom have been the subject of earlier Commission investigative activities and have committed similar violations in the past.

. . . It prosecutes only a small percentage of these violators and only a small percentage of their violations, mostly through out-of-court civil forfeiture settlements, which exact only a small percentage of illegally obtained revenues as a deterrence against future noncompliance.

. . . It processes these violators without uniformity of administration or policy, and with some duplication of effort.

"It primarily investigates complaints about many small, licensed carriers. . ."

A LARGE PERCENTAGE OF VIOLATORS WERE INVESTIGATED BECAUSE OF COMPLAINTS ORIGINATING FROM OUTSIDE OF THE COMMISSION.

* * * 57% of the investigations stemmed from complaints originating outside the Commission. 21% of these came from carriers.

* * * 43% of the investigations stemmed from internal Commission actions. 29% of these came from general and rate compliance surveys.

* * * 48% of the prosecutions stemmed from complaints originating outside the Commission.

* * * 63% of the investigations for unauthorized transportation violations stemmed from complaints originating outside the Commission.

* * * 50% of the investigations for tariff, rate and credit violations stemmed from complaints originating outside the Commission.

* * * 50% of the investigations for aiding and abetting violations stemmed from complaints originating outside the Commission.

* * * 41% of the investigations for household goods violations stemmed from complaints originating outside the Commission.

* * * 34% of the investigations for administrative[1] violations stemmed from complaints originating outside the Commission.

1) Includes failure to keep or submit prescribed records.

A LARGE PERCENTAGE OF VIOLATORS WERE SMALL CARRIERS.

* * * Of those investigated, whose violations were reported with evidence, 40% had gross revenues of less than $250,000--53% had gross revenues of less than $500,000.

* * * Of those prosecuted, 51% had gross revenues of less than $500,000.

* * * Of those investigated, evidence was developed on 9% more with gross revenues of less than $100,000 than with gross revenues exceeding $1 million.

* * * Of those prosecuted for unauthorized transportation violations, 46% had gross revenues of less than $250,000 --23% had gross revenues exceeding $1 million.

* * * Of those against whom fines and forfeitures were assessed, 40% had gross revenues of less than $250,000.

A LARGE PERCENTAGE OF VIOLATORS WERE LICENSED BY THE COMMISSION.

* * * Of those investigated, 2 out of every 3 were licensed.

* * * Of those prosecuted, 51% were licensed.

* * * Of those prosecuted via civil forfeitures, 59% were licensed.

* * * Of those prosecuted via civil injunctions and criminal actions, 39% were licensed.

". . . allegedly engaged in unauthorized transportation. . ."

MOST OF THE VIOLATORS WERE INVESTIGATED FOR UNAUTHORIZED TRANSPORTATION VIOLATIONS.

* * * 69% of all investigations[1] were for unauthorized transportation violations--10% for rate, tariff and credit violations--5% for aiding and abetting violations--3% for administrative violations--3% for household goods violations, and 10% for all other violations combined.

* * * 64% of all those against whom evidence was developed[2] were for unauthorized transportation violations --9% for rate, tariff and credit violations--9% for aiding and abetting violations--6% for administrative violations--6% for household goods violations, and 6% for all other violations combined.

1) Includes all BOp 26 reports with and without evidence that were studied.

2) Includes only BOp 26 reports submitted with evidence.

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* * * 65% of those prosecuted were for unauthorized transportation violations --8% for rate, tariff and credit violations--14% for aiding and abetting violations--4% for administrative violations--4% for household goods violations, and 5% for all other violations combined.

* * * 50% of all those dropped from prosecution were for unauthorized transportation violations--15% for rate, tariff and credit violations--15% for aiding and abetting violations--5% for administrative violations--7% for household goods violations, and 8% for all other violations combined.

* * * 71% of all civil forfeiture prosecutions were for unauthorized transportation violations--15% for aiding and abetting violations--7% for administrative violations --6% for household goods violations, and 1% for all other violations combined.

* * * 55% of all criminal prosecutions were for unauthorized transportation violations-- 28% for rate, tariff and credit violations —9% for aiding and abetting violations, and 8% for administrative violations.

* * * 76% of all injunction prosecutions were for unauthorized transportation violations —6% for rate, tariff and credit violations --14% for aiding and abetting violations, and 4% for all other violations combined.

* * * 62% of all administrative actions were for unauthorized transportation violations-- 5% for rate, tariff and credit violations --12% for aiding and abetting violations --10% for household goods violations, and 11% for all other violations combined.

". . . who have been the subject of earlier ICC investigative actions and who have committed similar violations in the past."

MOST VIOLATORS HAD BEEN PREVIOUSLY WARNED ABOUT THEIR VIOLATIONS.

* * * Of those investigated, 70% had been warned concerning the violation.

* * * Of those against whom evidence was developed, 69% had been warned concerning the violation.

* * * Of those prosecuted, 73% had been warned concerning the violation.

* * * Of those dropped from prosecution, 60% had been warned concerning the violation.

A LARGE PERCENTAGE OF VIOLATORS HAD BEEN THE SUBJECT OF EARLIER COMMISSION INVESTIGATIVE ACTIVITIES.

* * * Of those investigated, 35% had been the subject of at least one prior investigation.

* * * Of those against whom evidence was developed, 44% had been the subject of at least one prior investigation.

* * * Of those prosecuted, 44% had been the subject of at least one prior investigation.

* * * Of those dropped from prosecution, 45% had been the subject of at least one prior investigation.

* * * Of those investigated with gross revenues exceeding $250,000, 46% had been the subject of at least one prior investigation.

* * * Of those against whom evidence had been developed with gross revenues exceeding $250,000, 60% had been the subject of at least one prior investigation.

* * * Of those prosecuted with gross revenues exceeding $250,000, 60% had been the subject of at least one prior investigation.

* * * Of those dropped from prosecution with gross revenues exceeding $250,000, 58% had been the subject of at least one prior investigation.

A LARGE PERCENTAGE OF VIOLATORS HAD COMMITTED SIMILAR VIOLATIONS IN THE PAST.

* * * Of those investigated, 38% had a prior record of at least one similar violation.

* * * Of those against whom evidence was developed, 63% had a prior record of at least one similar violation.

* * * Of those prosecuted, 66% had a prior record of at least one similar violation.

* * * Of those dropped from prosecution, 53% had a prior record of at least one similar violation.

* * * Of those prosecuted with a prior record of 1 or 2 similar violations, 55% had gross revenues exceeding $250,000--28% had gross revenues exceeding $2 million.

* * * Of those prosecuted with a prior record of 3 or 4 similar violations, 67% had gross revenues exceeding $250,000--28% had gross revenues exceeding $2 million.

* * * Of those prosecuted with a prior record of 5 or more similar violations, 80% had gross revenues exceeding $250,000--46% had gross revenues exceeding $2 million.

* * * Of those dropped from prosecution with a prior record of 1 or 2 similar violations, 70% had gross revenues exceeding $2 million.

* * * Of those dropped from prosecution with a prior record of 3 or 4 similar violations, 44% had gross revenues exceeding $2 million.

* * * Of those dropped from prosecution with a prior record of 5 or more similar violations, 53% had gross revenues exceeding $2 million.

A SIGNIFICANT PERCENTAGE OF VIOLATORS HAD PRIOR CONVICTIONS UNDER THE INTERSTATE COMMERCE ACT.

* * * Of those investigated, 25% had at least one prior conviction under the Act.

* * * Of those with at least one prior conviction under the Act, 53% were not prosecuted (17% were dropped from prosecution and 36% had no evidence reported against them).

* * * Of those prosecuted and convicted, 22% had at least one prior conviction under the Act.

"It prosecutes only a small percentage of these violators and only a small percentage of their violations. . . ."

MANY VIOLATORS WERE NOT PROSECUTED.

* * * Two-thirds of those investigated for allegedly violating the Interstate Commerce Act were not prosecuted.

* * * Over one-quarter of those with documented violations were not prosecuted.

MANY VIOLATIONS WERE NOT PROSECUTED.

* * * 80% of the counts discovered were not reported with evidence.

* * * 85% of the counts discovered were not prosecuted.

* * * 33% of the counts reported with evidence were not prosecuted.

* * * 70% of the counts discovered for unauthorized transportation violations were not reported with evidence.

* * * 90% of the counts discovered for unauthorized transportation violations were not prosecuted.

* * * 50% of the counts reported with evidence for unauthorized transportation violations were not prosecuted.

* * * 80% of the counts discovered for rate, tariff and credit violations were not reported with evidence.

* * * 95% of the counts discovered for rate, tariff and credit violations were not prosecuted.

* * * 51% of the counts reported with evidence for rate, tariff and credit violations were not prosecuted.

* * * 80% of the counts discovered for aiding and abetting violations were not reported with evidence.

* * * 89% of the counts discovered for aiding and abetting violations were not prosecuted.

* * * 43% of the counts reported with evidence for aiding and abetting violations were not prosecuted.

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* * * 19% of the counts discovered for administrative violations were not reported with evidence.

* * * 69% of the counts discovered for administrative violations were not prosecuted.

* * * 52% of the counts reported with evidence for administrative violations were not prosecuted.

* * * 51% of the counts discovered for household goods violations were not reported with evidence.

* * * 54% of the counts discovered for household goods violations were not prosecuted.

* * * 2% of the counts reported with evidence for household goods violations were not prosecuted.

* * * 75% of the counts discovered for all other violations were not reported with evidence.

* * * 89% of the counts discovered for all other violations were not prosecuted.

* * * 54% of the counts reported with evidence for all other violations were not prosecuted.

". . . mostly through out-of-court civil forfeiture settlements, which exact only a small percentage of illegally obtained revenues as a deterrence against future noncompliance."

MANY OF THE AVAILABLE METHODS OF PROSECUTION WERE UNDER UTILIZED.

* * * 72% of those convicted received civil forfeitures.

* * * 11% of those convicted received civil injunctions.

* * * 10% of those convicted received criminal fines.

* * * 7% of those convicted received administrative sanctions.

MOST OF THE AVAILABLE METHODS OF PROSECUTION TOOK APPROXIMATELY THE SAME TIME TO SUCCESSFULLY CONCLUDE.

* * * Approximately 11 months elapsed from initiation of an investigation until its termination via a successful out-of-court civil forfeiture action.

* * * Approximately 12 months elapsed from initiation of an investigation until its termination via a successful criminal or civil injunction action.

* * * Approximately 19 months elapsed from initiation of an investigation until issuance of a Commission final cease and desist order.

COURT-IMPOSED PENALTIES WERE GENERALLY HIGHER THAN OUT-OF-COURT SETTLEMENTS.

* * * Overall, those who agreed to out-of-court civil forfeitures gave up an average of $114 per count in forfeitures. They received more than this in illegal revenues from their violations--an average of $303 per count.

* * * The Justice Department obtained an average of $354 per count in civil forfeiture cases referred to it for prosecution. Overall, those who were prosecuted in court actions gave up an average of $155 per count in fines and forfeitures. They received more than this in illegal revenues from their violations --an average of $200 per count.

* * * For unauthorized transportation violations, those who negotiated out-of-court civil forfeiture settlements gave up an average of $117 per count in forfeitures. They received more than this in illegal revenues from their violations--an average of $280 per count.

FOR EXAMPLE:

Respondent committed 100 unauthorized transportation violations for which its projected illegal revenues were approximately $120,000. 23 violations were reported with evidence, totaling around $27,600 in illegal revenues. Respondent was prosecuted for 18 of these violations and agreed to a $1,000 civil forfeiture settlement. (L & E File #15-72-18)

Respondent committed 88 unauthorized transportation violations for which its projected illegal revenues were approximately $27,500. 20 violations were reported with evidence, totaling around $6,800 in illegal revenues. Respondent was prosecuted for the 20 violations and agreed to a $1,000 civil forfeiture settlement. (L & E File #4-72-49)

Respondent committed more than 300 unauthorized transportation violations for which its projected illegal revenues were approximately $304,500. 37 violations were reported with evidence, totaling around $30,000 in illegal revenues. Respondent was prosecuted for 20 of these violations and agreed to a $5,000 civil forfeiture settlement. (A shipper involved in these violations forfeited $3,000.)
(L & E File #12-72-83)

Respondent committed 100 unauthorized transportation violations of which 20 were reported with evidence. It received approximately $5,400 in illegal revenues from the violations which were documented. Respondent was prosecuted for the 20 violations and agreed to a $1,000 civil forfeiture settlement.
(L & E File #6-72-84)

Respondent committed more than 100 unauthorized transportation violations of which 29 were reported with evidence. It received approximately $18,000 in illegal revenues from the violations which were documented. Respondent was prosecuted for 16 of these violations and agreed to a $2,500 civil forfeiture settlement. (A shipper involved in these violations forfeited $1,000.)
(L & E File #15-72-48)

Respondent committed 150 unauthorized transportation violations for which its projected illegal revenues were approximately $40,000. 35 violations were reported with evidence, totaling around $9,800 in illegal revenues. Respondent was prosecuted for 20 of these violations and agreed to a $1,000 civil forfeiture settlement.
(L & E File #12-72-65)

Respondent committed more than 50 unauthorized transportation violations of which 20 were reported with evidence. It received approximately $17,000 in illegal revenues from the violations which were documented. Respondent was prosecuted for 20 of these violations and agreed to a $2,000 civil forfeiture settlement.
(L & E File #12-72-80)

Respondent committed 226 unauthorized transportation violations of which 25 were reported with evidence. It received approximately $5,900 in illegal revenues from the violations which were documented. Respondent was prosecuted for 20 of these violations and agreed to a $2,000 civil forfeiture settlement.
(L & E File #16-72-33)

MOST OF THE FORFEITURES AND FINES WERE SUBSTANTIALLY LESS THAN THE ILLEGAL REVENUES RECEIVED BY VIOLATORS AND SUBSTANTIALLY BELOW THE $500 PER COUNT STATUTORY PENALTY AUTHORIZED FOR MOST VIOLATIONS.

* * * Those prosecuted gave up an average of $119 per count in total forfeitures and fines. They received more than this in illegal revenues from their violations--an average of $290 per count.

Note: This $290 figure and the illegal revenue averages shown hereafter are based upon counts reported with evidence--not upon illegal revenues received from the total number of counts discovered, which would be substantially higher since there were 80% more counts discovered than reported with evidence, as previously indicated.

* * * For unauthorized transportation violations, those who were prosecuted in court actions gave up an average of $160 per court in criminal fines. They received less than this in illegal revenues from their violations --an average of $146 per count.

OUT-OF-COURT CIVIL FORFEITURE SETTLEMENTS AVERAGED $13 MORE PER COUNT THAN THE APPROVED MINIMUM FORFEITURE.

* * * Civil forfeiture minimum recommendations of field attorneys averaged $94 per count as compared with a $101 per count minimum approved by Headquarters. Settlements reached with respondents by field attorneys averaged $114 per count.

"It prosecutes these violators without uniformity of administration or policy."

72-293 O - 76 - 13

POLICY:

The Bureau of Enforcement's Memorandum of Instructions No. E-6 states that the memorandum of review "will include a description of the . . . carrier's ability to pay or credit data as required by 4 CFR 105.3. (Federal Claims Collection Standards -- General Accounting Office - Department of Justice)

4 CFR 105.3 states:

> "(a) Claims referred to the General Accounting Office, and to the Department of Justice for litigation, will be accompanied by reasonably current credit data indicating that there is a reasonable prospect of effecting enforced collections from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.
>
> "(b) Such credit data may take the form of (1) a commercial credit report, (2) an agency investigative report showing the debtor's assets and liabilities and his income and expenses, (3) the individual debtor's own financial statement executed under penalty of perjury reflecting his assets and liabilities and his income and expenses, or (4) an audited balance sheet of a corporate debtor."

4 CFR 103.2 states:

> "If the agency's files do not contain reasonably up-to-date credit information as a basis for assessing a compromise proposal such information may be obtained from the individual debtor by obtaining a statement executed under penalty of perjury showing the debtor's assets and liabilities, income and expense. Forms such as Department of Justice form DJ-35 may be used for this purpose."

The Bureau of Enforcement has indicated the following:

> In order to improve the effectiveness of the Federal Courts with respect to other types of violations of law, particularly felonies and other crimes of major significance, the Commission beginning in August, 1967, implemented the Federal Claims Collection Act and has made use of demand settlement procedures in appropriate cases to obtain monetary sanctions. Each case handled under the demand forfeiture settlement procedure involves a recommendation for Court action and thus has to meet all of the requirements necessary for successful prosecution as a civil claim in the Federal Courts. Should settlement efforts break down, the case will be presented to the Department of Justice for filing and processing in court. The procedure, instituted pursuant to the Federal Claims Collection Act of 1966 (31 U.S.C. 951), has become a major part of the Commission's enforcement effort. It should be emphasized that, though the demand settlement process is administered in the Bureau of Enforcement, it is Formal Enforcement as opposed to Administrative Enforcement. (Program Evaluation Memorandum dated June 22, 1973)

From Appendix No. 11 to Summary of Regional Management Conference, Thursday, December 7, 1972, entitled "Federal Claims Collection Act, Principles and Guidelines for Institution, Negotiation, Settlement or other Final Disposition of Civil Forfeiture Claims":

"Another factor and one which I believe in the coming year we need to again give greater attention to, is the financial condition of the respondent. This will require more financial data in the investigative report. Gross transportation revenue has in many instances proved not to reflect the true condition of the respondent. This consideration of the financial condition of the respondent is aimed at one principle that both we and the Department of Justice are jointly concerned about, namely, will we have a collectable judgment. As you know, when we transmit the file to the Department of Justice where a respondent has not settled we must forward financial data. Now, what I am saying is let's look closer at this financial information before recommending the institution of a civil forfeiture action. This will also greatly assist you in your negotiations toward a settlement of the case once instituted."

From Bureau of Operations Field Staff Manual, Part V, Section B-3 dated February 11, 1974:

"PREPARATION OF FORM BOp FIELD NO. 26 . . .

DESCRIPTION OF RESPONDENT

"Show respondent's gross revenue for the last calendar year and for the current year to date of investigation . . . .

"The amount and detail of information to be furnished under this subject will vary, with different types of cases and whether or not evidence is submitted, and must be determined by the judgment of the investigator or the advice of the regional director or regional counsel. In some violations, it may be essential for the report to describe extensively and in considerable detail the respondent's organizational setup, kind of records maintained, or other administrative or operating phases of respondent's business, while in other cases, it may be adequate for such data to be furnished in very brief form."

MANY INVESTIGATIONS WERE PROCESSED WITHOUT ANY FINANCIAL DATA.

* * * Approximately one-half of the investigations had no gross revenues indicated.

* * * Approximately one-quarter of the investigations reported with evidence had no gross revenues indicated.

MOST CIVIL FORFEITURE NEGOTIATIONS WERE UNDERTAKEN WITHOUT ADEQUATE FINANCIAL DATA.

During a civil forfeiture negotiation, in which the financial condition of respondents was at issue, the trial attorney wrote to Headquarters as follows:

> "As I understand it, before we recommend a civil forfeiture action to the Department of Justice, we must convince that Department of the financial soundness of defendants, and I am not satisfied now that the financial status of either . . . or . . . would be very illuminating. The practice is for the investigator to give a cursory report of respondent's income or revenue, but this information falls far short of what the Department of Justice requires. The problem is that we recommend civil forfeiture and, then, when court action is necessary, we find ourselves without sufficient financial data to support the recommendation to the Department of Justice. If court action is necessary, which I anticipate in this case, the supervisor will have to conduct an independent financial status inquiry which will require considerable time and travel with problematical results. Would it not be better if we could set in motion some practice to require an in-depth inquiry into respondent's financial status at the time of the initial investigation. Then, if such report is negative, it seems that we should process the case by criminal information rather than civil forfeiture. Utilizing the civil forfeiture process as far as certificated carriers are involved does not present too much of a problem, but I find myself questioning its merit as to so-called "gypos."

Headquarters replied as follows:

> "In regard to your memorandum of August 15, 1972, you have suggested a double standard as to financial ability. The Department of Justice has but one standard and that is whether the judgment entered has a possibility of collection which is the same for both criminal and civil forfeiture. I do not agree with your suggested approach to proceed criminally against noncertificated and civil forfeiture against certificated carriers. Enforcement actions based on such a standard would discriminate against the noncertificated carrier and is contrary to our approach for uniform enforcement. I share your concern for adequate information as to the financial condition of those investigated. When you believe you do not have adequate financial data, you should request this information prior to making your initial recommendation for enforcement action. If you desire to have a revision of the monetary minimum assigned to this matter, please submit your recommendation upon receipt of replies to your August 15, 1972 letters."

A purported balance sheet and income statement was provided by one respondent to the investigator. The other respondent informed the investigator what his gross revenues were. This data was the financial basis of the settlement.

The second respondent paid a $500 civil forfeiture--$500 less than the minimum originally approved because of alleged financial hardship.

(L & E File #15-72-36)

In reviewing a trial attorney's memorandum of review and recommendation for a civil forfeiture, one Washington reviewing attorney said:

> "The charging of 8 counts at $800 may be too severe. I have no idea as to his profits and therefore his ability to pay. The only figure I have is of gross revenue but that is not determinative."
> (L & E File #12-72-69)

No financial data was reported for the respondent. A minimum civil forfeiture of $1,500 was recommended and approved. Claims letters were forwarded, but respondent failed to respond. The trial attorney then requested the following from the Regional Director:

"1. A commercial credit report.

2. An investigation report showing carrier's assets, liabilities, income and expenses.

3. Or a report as in (2) but prepared by the carrier under oath and sworn to before a notary, or

4. An audited balance sheet of the respondent. Please further determine whether or not said party is in bankruptcy or receivership."

Later, the trial attorney wrote to Headquarters that:

"On October 15, 1972, a response was received from District Supervisor . . . advising that the carrier has been closed down for some time and that . . . is now in the business of buying and selling trucks. He is operating out of a small office in a rundown shed and appears to be in financial difficulties. All attempts of securing financial data have been fruitless since the carrier was not listed with Dun & Bradstreet and is now defunct. Accordingly, civil forfeiture is not an appropriate method of enforcement at this time."

Headquarters responded: "Believe we should terminate on grounds carrier not in operation and in apparent financial distress." The file was closed.
(L & E File #16-72-35)

No financial data was reported for the respondent. The trial attorney recommended civil forfeiture negotiations to obtain at least $500. The Washington reviewing attorney agreed, but indicated "Re: Financial data - None exists." Headquarters approved the recommendation.
(L & E File #10-72-3)

Respondent's gross revenues were reported to be $330,000. A $4,000 minimum civil forfeiture settlement was approved by Headquarters. Negotiations began, and during them, respondent submitted financial statements prepared from its records without audit or outside verifications. A $1,500 forfeiture was paid.
(L & E File #9-72-40)

No financial data was reported for the respondent. A minimum of $700 in forfeitures was recommended and approved. Respondent alleged financial difficulties during the negotiations and offered to settle for $200. The trial attorney informed Headquarters of his request that respondent "advise me of his position by letter and substantiate the alleged financial difficulties prompting the $200 offer." "Such," he stated, "has not been received." A counter offer of $500 was approved by Headquarters. Later, the trial attorney wrote to Headquarters as follows:

> "Contact with subject individual was made by telephone concerning the above-mentioned claims. He is not willing to pay the $500 minimum authorized by your memorandum of November 22, 1972.
>
> "He has advised me that he no longer has any tractor semitrailers and is confining his activities to sales effort . . . . He advise me that he would pay $200 on the four counts but no more . . . .
>
> "I recommend that the offer of $200 be accepted in view of the defendant no longer being in the trucking business."

It was.

(L & E File #12-72-34)

Respondent's gross revenues were reported to be $24,000. A minimum civil forfeiture of $1,000 was recommended and approved, although the Washington reviewing attorney thought it too high in comparison with respondent's gross revenues. Attempts at settlement reached an impasse, respondent advising that "he would not and could not pay any amount and would see us in court." Further financial data then was obtained, but was "somewhat sketchy." Headquarters discontinued the forfeiture negotiations stating that the violations had terminated.
(L & E File #6-72-15)

Respondent's gross revenues were reported to be around $116,000. A minimum civil forfeiture of $1,200 was recommended and approved. The Washington reviewing attorney stated that "I believe that we should proceed with civil forfeiture until such time as it is shown that a $1,200 penalty would be unwarranted."

Negotiations were at a stalemate, and the trial attorney submitted a Department of Justice Financial Form DJ 35 to the respondent. Respondent refused to complete it "because information he would have to list thereon would differ greatly from information he had given various financial institutions." Instead, he sent the following letter to the trial attorney:

"I am enclosing the following figures, which to the best of my knowledge are correct:

Cash on hand & in banks	O.D.	($3,159.42
Accts. rec. and in transit		4,542.00
Equipment - cost		140,873.60
Mortgage notes - equipment & Ins.		136,174.34
Notes payable		8,114.62
Accounts Payable:		
Texas Kenworth	Appros.	8,000.00
Ferguson Texaco		1,600.00

(Monthly installment payments are $5,280.41)

Very truly yours,"

The file was closed, but the Bureau of Operations protested:

From the Field Staff to the Director,
Bureau of Operations

"This office received a copy of a closing report in which Director . . . closed the above case apparently

on the basis of the respondent's poor financial condition. In reviewing the file relative to the handling of the case under civil forfeiture, it was noted that the Bureau of Enforcement first set the amount of the fine at $1200 but the respondent indicated there was no way he could pay more than $1000 and later changed this to an offer of $500 which was rejected by the Bureau of Enforcement on May 4, 1973.

"In reviewing the non-compliance record of the respondent, it was noted that on December 12, 1968, he paid a $300 fine after considerable negotiation. At this time, the respondent indicated he was unable to pay a larger fine due to his poor financial condition.

"At the time of the previous L&E investigation, L&E 12-66-65 made in 1966, the respondent was operating two vehicles and had an estimated gross revenue of $50,000. In this instant investigation he was operating four vehicles with an estimated gross revenue of $115,974. On August 3, 1973, Trial Attorney . . . advised that the last time he talked to the respondent, he still had four tractor-semitrailer units.

"It appears that the respondent has a good working knowledge of how the Bureau of Enforcement handles its civil forfeiture cases. He admitted to the investigators in both of the previous investigations he was aware that the transportation was unlawful but needed the revenue as well as a back haul for his vehicles. When last contacted, he was still operating four units and in view of Director . . .'s letter to him dated October 30, 1973, advising him that in view of the marginal financial condition of his company, the civil forfeiture claims were being terminated, I am sure he is still looking for back hauls without regard to the lawfulness of the transportation.

"Since the respondent is continuing to operate his motor carrier business, it would appear that at least an injunction effort should have been made to discourage the probability of his performing unlawful transportation.

"This matter is referred to you for whatever action you might deem necessary. I am attaching a copy of Director . . .'s letter to the respondent for your reference."

From the Director, Bureau of Operations,
to Director, Bureau of Enforcement

"I am attaching hereto Assistant Regional Director . . . memorandum concerning the closing of the instant case in view of the marginal financial condition of the respondent's company.

"From the track record outlined in Mr. . . . memorandum, it appears that the next time we investigate the respondent he will have sunk so deep in his personal pocket of poverty that he will probably have eight tractor semi-trailer units and be enjoying an estimated gross revenue of one-quarter million dollars. I will appreciate your further consideration of this case."

The Bureau of Enforcement requested a further determination from the Bureau of Operations as to whether the respondent was continuing his illegal operations, so that it could obtain an injunction were such a report positive. It was:

From the Director, Bureau of Operations,
to Director, Bureau of Enforcement

"Based upon Mr. . . . response, an additional field investigation was undertaken. Tentative findings indicate the respondent has not stopped

operating, but in fact was continuing to operate during the period March 1, 1973 to October 30, 1973 when attempts were made to collect civil forfeiture claims. Further, it is indicated that possible unlawful transportation was performed subsequent to your letter of October 30, 1973 terminating civil forfeiture claims."

The Bureau of Enforcement subsequently obtained an injunction against respondent in addition to a criminal conviction.
(L & E File #12-72-91)

Respondent's gross revenues were reported to be around $265,000. A minimum civil forfeiture of $1,600 was recommended. Headquarters increased this minimum to $3,000. During the negotiations, respondent submitted a notorized letter to the Regional Counsel advising that: "The year 1971 was not, by far, one of our better years in operation. . . . Our auditors have not examined our books for 1971 but our bookkeeper and myself ran a rough statement of operations and the figure is showing a loss of around $16,000 for 1971." "In view of the financial condition of the respondent" a $2,000 settlement was accepted.
(L & E File #3-72-1)

Respondent's gross revenues were reported to be around $70,000. A minimum civil forfeiture of $1,000 was recommended and approved. An agreement was executed by the respondent settling the claim for $2,000. $1,300 was remitted but not the balance. A letter from respondent's attorney stated that "It appears . . . has no money and as he borrowed the funds with which he made prior payments and has exhausted his credit. Can the $700 figure be compromised to an amount . . . is perhaps able to pay or a schedule of small payments be set up."

The trial attorney wrote to Headquarters that "I have, myself, had several conversations with Mr. . . . and I am impressed with his sincerity regarding his lack of funds," and he recommended a payment schedule for respondent to pay off the $700 balance. Headquarters advised the trial attorney as follows:

> "Under the circumstances described in your memorandum of September 18, 1973, regarding the entitled matter, this action should be concluded on the basis of $1,300, the amount already received."

(L & E File #13-72-29)

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POLICY:

4 CFR 103.5 states:

> "Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised pursuant to this part if the agency's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon."

The Bureau of Enforcement has indicated as follows:

> "Any attempt to press civil forfeiture claims which are not of sufficient quality to present in court should efforts at settlement fail would weaken our program and cannot be undertaken. To initiate a civil forfeiture with the expectation that, if a settlement is not negotiated, a termination of the action without referral to the Department of Justice should occur would be the surest way to terminate the Federal Claims Collection Act as an enforcement tool.
>
> Program Evaluation Memorandum
> dated June 22, 1973

From Appendix No. 11 to Summary of Regional Management Conference, Thursday, December 7, 1972, entitled "Federal Claims Collection Act, Principles and Guidelines for Institution, Negotiation, Settlement or other Final Disposition of Civil Forfeiture Claims":

"Another important facet involving the use of this financial data is the setting of the monetary minimum on which the file may be negotiated down to without the necessity of seeking further approval from this office. This minimum figure should, on the one hand, be a realistic minimum, but on the other, it need not be the figure on which you are settling the majority of your cases. In considering the minimum figure, not only the size of the carrier or shipper is to be considered, but also, in the case of the carrier, the gross transportation revenues derived from the unauthorized transportation as documented and projecting those revenues against the number reportedly discovered to assess a meaningful forfeiture sufficient to serve as a deterrent to further violations, not only by this particular respondent, but others as well. In the case of shippers, you should consider the savings it received by the use of the unauthorized carrier as compared to authorized carrier tariff charges.

"What we have considered relates mainly to the institution of a civil forfeiture action from a monetary standpoint. However, there are two other principle areas to consider. The first of these areas is whether the facts as developed indicate that compliance may be attained by this enforcement action. If the facts indicate that we have repeatedly had enforcement actions and all other indicators show a collectable judgment, consideration should be given to the institution of both a civil forfeiture action to extract the profits from such violations as well as a civil injunction to enjoin further violations and lay the basis for criminal contempt for continued violations. However, if the facts indicate continued operations and marginal financial condition indicating that a judgment is not collectable, but that enforcement action is necessary to stop continued violations, then you should consider bringing only a civil injunctive action. Of course, there are certain types of violations where civil forfeiture action does not apply and only civil injunction or criminal action is available."

The Director, Bureau of Enforcement, has stated:

> "While reasonable men may differ, I do not subscribe to enforcement actions which can be expected to produce nothing more than token fines. Token fines may well detract from our enforcement efforts rather than contribute toward compliance which both our Bureaus are striving to achieve for the Commission. The time and effort so far expended in this matter with the aim of producing a formal punitive enforcement action, is, I believe, not consistent with our joint efforts to concentrate on those problems having significant economic impact."
>
> In a Memorandum to Director, Bureau of Operations, dated April 5, 1972, extracted from L & E File #9-72-8

From Bureau of Enforcement Memorandum dated February 10, 1975, commenting on GAO Draft Report entitled "Compliance and Enforcement Aspects of ICC's Regulation of Rail and Motor Carriers Need Improvement":

". . . If he (field attorney) is satisfied that enforcement action is justified, he would then recommend the institution of a civil forfeiture suit, if the matter were amenable to that type of enforcement action in the appropriate Federal court. At the same time, he would indicate the monetary amount he believed appropriate for settlement, if the carrier desired to dispose of the matter short of litigation. That figure would represent his best estimate of a reasonable and just penalty based upon the above factors, the financial situation of the carrier, the effectiveness of the penalty as a permanent deterrent and the likelihood of a trial if a greater sum were demanded."

(parenthesis added)

MANY CIVIL FORFEITURE SETTLEMENTS SEEMED TO HAVE DUBIOUS DETERRENCE VALUE.

For Example:

Respondent's gross revenues were reportedly $1 million. He had received over $17,000 in illegal revenues from 20 documented violations. A licensed carrier, it had been the subject of numerous Commission investigations and had been convicted criminally of violating the Interstate Commerce Act on three prior occasions. The investigative report stated that, "The numerous warning letters, surveys and Commission investigations of various . . . trucking operations in the past 16 years involving unauthorized transportation suggests that he only stops the violations for a short period of time, then starts again." A minimum forfeiture of $2,000--representing $100 per violation (count) prosecuted--was recommended by field attorneys, approved by Headquarters, and agreed to by respondent.
(L & E File #12-72-80)

Respondents had reported gross revenues of $4 million and $1 billion, respectively. They had received over $19,000 in illegal revenues from 22 documented violations. One respondent, a licensed carrier, had been penalized a total of $4,500 in three prior civil forfeiture actions. The trial attorney recommended a minimum $1,000 civil forfeiture for each, based on 10 violations--an average of $100 per violation. Headquarters raised this by $4,000 for the first respondent, based on 20 violations--an average of $250 per violation. Respondent settled for this amount. Headquarters raised the minimum for the second respondent by $1,000, based on 20 violations and respondent settled for $3,000--an average of $150 per violation.
(L & E File #12-72-83)

Respondent's gross revenues were reportedly over $1.2 million. It had received around $5,000 in illegal revenues from 12 documented violations. A licensed carrier, it had been the subject of 6 prior Commission investigations and was issued a cease and desist order as a result of one of them. Field attorneys recommended and Headquarters approved a $1,000 minimum civil forfeiture for 12 violations--less than $100 for each. Respondent agreed to a settlement of $1,750--approximately $145 per violation.
(L & E File #15-72-31)

Respondent's parent company reportedly had gross revenues exceeding $154 million. An unlicensed carrier, it had received around $1,520 in illegal revenues from 4 documented violations. Field attorneys recommended a $400 minimum civil forfeiture for 4 violations--an average of $100. Headquarters raised this to $500. Respondent agreed to a settlement of $1,000--$250 per violation.
(L & E File #12-72-35)

Respondent's gross income was not reported. It had received around $1,700 in illegal revenues from 20 documented violations. A licensed carrier, it had been fined $500 criminally as a result of a prior ICC investigation 8 years before. Field attorneys recommended and Headquarters approved a minimum civil forfeiture of $500 for 5 violations --an average of $100 per count. Respondent agreed to a settlement of $750--an average of $150 per violation.
(L & E File #12-72-49)

Respondent had a reported gross income of around $700,000. A licensed carrier, it had received approximately $565 in illegal revenues from 10 documented violations. It had been the subject of a prior Commission investigation. Field attorneys recommended and Headquarters approved a $500 minimum civil forfeiture for 10 violations--an average of $50 per violation--stating:

> "It is true that the carrier may have been misadvised as to the necessity of filing a tariff for this type service, but it has tacitly admitted that rates were required to cover this transportation. At least, at the time of the investigation it was placed on notice and nothing has been done. The carrier is an otherwise responsible operator, and it is believed that a payment of the amount above named will convince it to file a tariff and otherwise will be in keeping with sound judgment and good conscience."

Respondent agreed to a $500 settlement.
(L & E File #15-72-12)

Respondent had reported gross revenues of around $745,000. It had received approximately $1,000 in illegal revenues from 10 documented violations. A licensed carrier, it had been previously warned about its performance of unauthorized transportation. Field attorneys recommended a minimum civil forfeiture of $500 for 5 violations--an average of $100 per violation. Headquarters raised this to $1,000 because respondent had falsified some of the shipping documents, and increased the number of violations prosecuted to 10. A $600 civil forfeiture settlement was agreed upon in view of the low gross revenue resulting from the transportation; the carrier having submitted a request to revoke its certificate; the nature of the commodity that was illegally transported--crushed rock; and the trial attorney's belief that the respondent made "no real attempt to conceal" the origin of the shipments in question.
(L & E File #12-72-16)

Respondent reportedly had gross revenues of $3 million. A licensed carrier, it had received approximately $10,000 in illegal revenues from 28 documented violations. It had been the subject of 9 prior Commission investigations, and had been enjoined against certain unlawful operations. It also had been criminally prosecuted on two occasions for violations of the Interstate Commerce Act and been fined $1,150. A $2,500 minimum civil forfeiture was recommended by field attorneys for 20 violations --an average of $125 per violation. Headquarters increased this minimum to $3,000. Respondent settled for $5,000.
(L & E File #13-72-27)

Respondents had gross revenues of approximately $402,000 and $3 million, respectively. Licensed operators, they had received a total of over $7,000 in illegal revenues from 20 documented violations. A civil forfeiture of $1,000 had just been assessed against each of them for 10 documented violations similar to the current investigation. Field attorneys recommended a $2,000 minimum forfeiture against both respondents. Headquarters reduced this to $1,000 against the respondent accused of aiding and abetting "in view of the limited gross revenues which it had received from these violations"--$366. A settlement of $1,000 was agreed to with each respondent --the Bureau feeling that "the parties are now making a stronger effort to straighten out their operations." (L & E File #10-72-41)

Respondent had reported gross revenues of over $900,000. A licensed carrier, it had received approximately $1,800 in illegal revenues from 9 documented violations. The subject of prior Commission investigative efforts, repondent also had received a $2,000 civil forfeiture a year earlier for 18 instances of unlawful transportation. Field attorneys recommended and Headquarters approved a minimum civil forfeiture of $1,000 for 9 violations. Respondent agreed to a $1,500 settlement.
(L & E File #13-72-40)

Respondent had gross revenues of around $250,000. An unlicensed operator, he had received around $900 in illegal revenues from 8 documented violations. Field attorneys recommended a minimum civil forfeiture of $800, stating that: "The relatively insignificant dollar value of the transportation performed is countered by the probability that enforcement action against this carrier will serve as a deterrent. The value of this case as such a deterrent gives it a significant economic impact." Respondent agreed to a $1,500 settlement--an average of around $187 per violation.
(L & E File #13-72-34)

Respondent had gross revenues of around $760,000. An unlicensed carrier, it had received around $2,800 from 16 documented violations. Field attorneys recommended a minimum civil forfeiture of $900 for 9 violations--an average of $100 per violation. Headquarters raised this to $1,000. The respondent settled for $1,200.
(L & E File #8-72-10)

Respondent had gross revenues of around $336,000. A licensed carrier, it had been the subject of previous investigative efforts and administrative handling for similar-type violations. Field attorneys recommended a minimum $300 civil forfeiture. Headquarters disagreed stating that it would "never bring about compliance for this size carrier," and raised the minimum $700. Respondent settled for $1,200.
(L & E File #8-72-402)

Respondent had gross revenues of around $234,000. An unlicensed operator, it had received approximately $3,300 in illegal revenues from 8 documented violations. Field attorneys recommended an $800 minimum civil forfeiture. Headquarters raised this $200 "in view of the total disregard of warning and the gross transportation revenues from unauthorized transportation." A settlement of $800 was agreed to because a "recent investigation indicates carrier responded and stopped this type of transportation; first prosecution; and response to administrative handling."
(L & E File #8-72-14)

Respondents had gross revenues of $18 million and $49 million, respectively. Licensed carriers, they had received over $3,000 in illegal revenues from 22 documented violations. Both respondents had been the subject of prior Commission investigations. A minimum civil forfeiture of $2,000 was recommended and approved against each. Respondents settled for $2,000.
(L & E File #12-72-5)

Respondent had gross revenues of around $5.3 million. A private carrier, it had received approximately $4,100 in illegal revenues from 14 documented violations. It had been fined criminally $1,500 for a previous violation of the Interstate Commerce Act. A minimum civil forfeiture of $1,500 was recommended and approved for 14 violations. Respondent agreed to settle for this amount.
(L & E File #12-72-61)

POLICY:

The Director, Bureau of Enforcement, has stated:

> "Enforcement actions should involve substantive matters that will contribute not only to the carrier's compliance, but also that of the industry."
>
> In a Memorandum to Regional Counsel dated February 14, 1972, extracted from L & E File #10-72-5

The Bureau of Operations' Field Staff Manual, Part I, Section D-1, states:

> "2. FUTURE COMPLIANCE AND ENFORCEMENT PRIORITIES AND EMPHASES: It is readily apparent that with the large number of carriers under the Commission's jurisdiction with their numerous agencies, terminals, and other facilities and the innumerable shipper and receiver locations, our limited staff does not permit total compliance policing. It is incumbent on the Regional Directors and field staff to direct their activities to assure that the emphasis of our administrative, compliance and investigative programs or activities is directed toward the elimination or reduction of those violations of the Act and regulations which are flagrant, widespread, and have an adverse effect upon the transportation industry, small shippers, and consumers. . . .
>
> "In general, compliance and enforcement emphasis must be placed nationwide on the following problem areas, all of which deserve equal priority:
>
> a. Any and all situations in which it can be shown that inadequate service

(either quantitatively or qualitatively) is being afforded the shipper, together with any other complaints that directly affect the normally unsophisticated consumer, such as the individual household goods shipper or small business.

b. Any situation in which there is reason to believe that carriers and/or shippers or receivers are not complying strictly with carrier tariffs; i.e., embracing any type of rebate, concession, device, or other departure from lawfully published and applicable rates, charges, rules or regulations, whether they be simple or complex.

c. Any situation involving inadequate car service and/or violation of an applicable Service Order, including failure of carriers and/or consignees to fully comply with Rules 14 and 27 of the Uniform Freight Classification with respect to the complete unloading of rail cars.

d. Failure of any carrier, subject to such regulations, to maintain continuous and appropriate insurance coverage.

e. Any situation involving the performance of substantial unauthorized transportation, whether by an authorized or unauthorized carrier, particularly where other adequate transportation services are known to be available.

"With respect to the above listings, subparagraphs 'a' through 'e' above, the Commission has pinpointed certain areas of continuing concern, the correction of which requires constant and positive emphasis to be placed thereon by our field staff; namely, small shipments, carrier service, freight car supply and utilization, household goods shipments, and those matters involving loss and damage, and regulations adopted by the Commission in Ex Parte No. 263."

From Bureau of Enforcement Memorandum dated February 10, 1975, commenting on GAO Draft Report entitled "Compliance and Enforcement Aspects of ICC's Regulation of Rail and Motor Carriers Need Improvement":

" . . . the GAO report appears to deal entirely with the civil forfeiture aspect of the Bureau's activities and it might be well, therefore, to again describe the actual functioning of that program. . . .

"An investigator, usually connected with the Bureau of Operations, submits a report containing some documentation of a number of alleged violations of a . . . motor carrier's operating authority, for example. The reviewing attorney analyzes the documentation submitted to establish initially whether each instance does, in fact, represent a legally sustainable and provable violation of law. If he finds that there are some of that type, he next attempts to evaluate the overall significance of the case presented; i.e., the nature and severity of the violations, whether they continued after clear cut notice to the carrier of their unlawfulness, the number thereof, the financial benefit, if any derived by the carrier, whether the violations represent offenses similar to those for which the carrier had been previously convicted and generally whether the violations have had any substantial economic impact on the general public."

MANY CASES SEEMED TO HAVE DUBIOUS REGULATORY VALUE. FEW, IF ANY, CONCERNED INADEQUATE SERVICE TO SHIPPERS--ONE OF THE 5 COMPLIANCE PRIORITIES.

For Example:

Respondent had gross revenues of around $30,000. An unlicensed, one-vehicle operator, he had no previous compliance history. 30 unauthorized transportation violations were documented against him (and a shipper joined as an aider and abetter), involving illegal revenues of approximately $4,100. Field attorneys recommended a minimum civil forfeiture of $100 for 2 violations.

> "I am recommending the low amount because of the nature of the transportation herein involved, its low profitability, and the fact that . . . is only a one-vehicle operator. In addition, the violations were brought about by the apparent failure of the authorized carrier to furnish sufficient vehicles to the shipper. Any attempt to collect any greater forfeiture would have the appearance of a purely technical punitive step and would not appear to be in keeping with our overall Bureau policy. The minor nature of the violations is not in keeping with the Commission's duties to concentrate on matters on substantial economic impact. I further understand that . . . has other similar carriers being investigated for violations of a similar tenor."

Headquarters raised this minimum by $300 and added 3 more violations. Respondent agreed to a $500 settlement.
(L & E File #12-72-38)

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Respondent had gross revenues of approximately $25,000. An unlicensed operator, he had no previous compliance history. 32 unauthorized transportation violations were documented against him involving illegal revenues of approximately $5,000. A minimum civil forfeiture of $1,500 was recommended by field attorneys for 15 violations. Headquarters lowered this by $500 in view of respondent owning only 1 tractor and 3 trailers. Respondent settled for $1,000.
(L & E File #12-72-6)

Respondent had gross revenues of approximately $25,000. The recipient of temporary ICC authority grants, respondent had not been investigated previously by the Commission. 13 unauthorized transportation violations were documented against him involving illegal revenues of around $3,100. There was no record that these violations were continuing. A civil injunction proceeding against the respondent was recommended and approved.
(L & E File #12-72-58)

Respondent had gross revenues of between $20/25,000. He operated school buses out of his residence and had no other facilities. An unlicensed carrier, he had no record or prior ICC investigations or convictions. 7 unauthorized transportation violations were documented against him involving $3,600 in illegal revenues. Field attorneys recommended a minimum civil forfeiture of $400 for 2 violations. Headquarters increased this to $500. Respondent settled for this amount.
(L & E File #12-72-1)

Respondent's business, grossing approximately $45,000, was being operated by his 15-year-old son, because of a recent heart attack. 32 household goods and 2 unauthorized transportation violations were documented against him, the latter resulting in $500 in illegal revenues. A licensed carrier, field attorneys recommended, and Headquarters approved, an $800 minimum civil forfeiture for 8 violations. "Based upon respondent's financial hardship, the nominal size of his operation, and the lack of significant economic impact of the violations upon the transportation industry," a $300 settlement was agreed to. The Director of the Bureau said: "Since the certificate and the business is, apparently, continued to be held in the name of the individual . . . it is necessary that some payment be exacted . . . ."
(L & E File #1-72-41)

Respondent held ICC authority as a regular route carrier to transport general commodities between specified points. Its gross revenues were reportedly around $63,000. The Commission received a complaint from another authorized motor carrier alleging that respondent was serving Fort Leonard Wood, Missouri, a point it was not permitted to serve if Fort Leonard Wood was located more than 12 miles from Crocker, Missouri. The following was contained in the BOp 26 Final Investigation Report:

"Specifically, respondent believes that Crocker, Mo. (the closest point to Fort Leonard Wood) is within twelve miles of Fort Leonard Wood. However, complainant furnished this office Department of Interior Geological Survey maps which indicated that the corporate limits of Crocker, Mo. was 12.67 miles from the closest gate at Fort Leonard Wood. But after investigation, I determined (1) that the corporate limits of Crocker, Missouri had been extended since the geological survey map had been printed and (2) that the closest gate (main gate) to Fort Leonard Wood is not located at the boundary where the highway enters Fort Leonard Wood but several hundred feet beyond this point. Moreover, the highway is maintained from the boundary to the gate by the government and therefore this portion is not considered a public highway. Thus, measurement must be made at the boundary of Fort Leonard Wood, which is also the point where the highway enters the Fort and is maintained by the government and considered a private road.

"With the above information, I called at the offices of Mr. Dale Stevens, Cartographer, U. S. Geological Survey, 901 Pine, Rolla, Missouri. Mr. Stevens measured the distance from the new corporate limits of Crocker, Missouri and the boundary to the Fort where the highway is maintained by the Fort. The distance was 12 miles and 200 to 250 feet. Since this was such a close question, Mr. Stevens also measured the distance by using the Missouri State Highway Department map of Pulaski County, Missouri. Again, Mr. Stevens arrived at approximately the same distance. Mr. Stevens claimed, however, that the maps could have been expanded at time of measurement due to heat and possibly the distance may be 12 miles or less instead of more than 12 miles. I therefore contacted Mr. Schreiber, Director of Defense, Mapping Agency, Kansas City, Missouri, and Mr. Schreiber had two of his cartographers, Messrs. Clifford Austin and Bryon Daugherty, mathematically compute the distance between the two points. In this way, it does not matter if the maps are expanded or contracted. And the mathematical computation of the distance in question was 12 miles and 180 feet. Assuming the maps

to be accurate, this computed distance is within plus or minus 30 feet of the true distance. Mr. Schreiber advised that in most instances the maps are accurate, but there remains a possibility that the maps could be somewhat inaccurate particularly when only 180 feet is involved in a 12-mile distance. Mr. Schreiber added that the only other way to ascertain this distance was to survey the distance in question. However, based on the U. S. Geological Survey topographical map, the distance in question is 12 miles and 180 feet plus or minus 30 feet.

"In order to determine the above facts, the following interviews were made and statements obtained.

"I interviewed Mrs. Dorothy Smith, City Clerk, Crocker, Missouri, and obtained the following statement, included herewith marked Exhibit B:

' September 7, 1972

'To Whom it May Concern:

'The South-eastern boundary of Crocker, Missouri, as shown on the General Highway Map of Pulaski County, Missouri dated 9-25-70 is correct as shown.

'Such corporate boundary is indicated by red line on the map.

'There are no further annexations planned for Crocker, Missouri in the near future.

' /s/ Dorothy Smith
(Mrs.) Dorothy Smith
City Clerk, Crocker, Missouri'

"Note: The general highway map of Pulaski County, Missouri, is included herewith marked Exhibit C."

"I interviewed LTC Robert Shannon, Provost Marshal at Fort Leonard Wood, Missouri, to ascertain that the main gate (the gate in question) is the closest entrance for commercial motor vehicle traffic for vehicles coming from Crocker, Missouri. I obtained the following statement, Exhibit D, from LTC Shannon:

' 6 September 1972

'To Whom it May Concern:

'The main gate of the Fort Leonard Wood Military Installation located on the Ft. Wood Spur, is the closest entrance for commercial motor vehicle traffic for vehicles coming from Crocker, Missouri.

'To my knowledge there was no other gate formerly used that was closer to Crocker.

' /s/ Robert Shannon
ROBERT SHANNON
LTC, MPV
Provost Marshal'

"I telephoned Mr. Day, Maintenance Engineer with the Missouri State Highway Department, Springfield, Missouri. Mr. Day is responsible for maintaining roads in Pulaski County. Mr. Day advised that the state maintains the highway in question only to the boundary of Fort Leonard Wood even though the gate to the Fort is beyond the boundary of Fort Leonard Wood.

"I called at the offices of Mr. Dale Stevens, Cartographer for U. S. Geological Survey at Rolla, Missouri. Mr. Stevens measured the distance between the points in question using the U. S. Geological Survey maps and as aforementioned, Mr. Stevens measured the distance to be 12 miles and 200 to 250 feet (Mr. Stevens did not use mathematical computations and claimed that there could be a discrepancy of 200 to 250 feet if the map was expanded, and therefore, the distance could be 12 miles or less).

"Also enclosed herewith are the U. S. Geological Survey maps marked Exhibit F.

"L&E Table No. 16 is enclosed herewith and lists 20 shipments (10 inbound and 10 outbound) where respondent served Fort Leonard Wood."

EXCUSES AND DEFENSES OFFERED

"On September 14, 1972, Mr. . . ., owner of respondent, called at the Kansas City office and the following self-explanatory statement (Exhibit C) was obtained:

'Kansas City, Missouri
September 14, 1972

'I, . . ., make the following statement of my own violition and without duress to . . ., who has identified himself as an employee with the Interstate Commerce Commission.

'I am owner of . . ., and I purchased this authority in 1965. At the time of purchase I was advised by . . ., an attorney at Jefferson City, Missouri, that Fort Leonard Wood was within 12 miles of Crocker, Missouri, and because of this, I purchased the authority.

'This is the reason . . . is now serving Fort Leonard Wood, Missouri.

'Witnessed by:

KNOWLEDGE AND WILFULNESS

"The respondent has not been previously prosecuted or contacted concerning this matter.

REMARKS

"The complaint originated with an attorney who represents a motor carrier that was recently involved in a

Commission proceeding resulting in a cease and desist order involving operating authority. Naturally, this complaint had to be handled expeditiously in order that complainant realizes that all complaints, regardless of the parties involved, are handled when facts warrant.

"The respondent, . . . , claimed that he could influence the City of Crocker, Missouri to expand its corporate boundaries to correct the situation in the event the Commission found the distance to be beyond the 12 miles. However, as I pointed out to Mr. . . . , this office had received a complaint and it was necessary to proceed under the present facts and not what may occur in the future."

As a result of this investigation report, field attorneys recommended a Commission investigation proceeding to determine whether respondent was performing unauthorized transportation. "The Bureau takes the position that the respondent's services of Fort Leonard Wood, Missouri, and pursuant to its interpretation of the concerned authority and boundary line is incorrect and such service is beyond the scope of the respondent's territorial authority. Consequently, the Bureau is of the view that an appropriate cease and desist order should be entered."

However, the respondent purchased property just outside the corporate limits of Crocker and that city annexed it for him to enable Crocker to be within 12 miles of Fort Leonard Wood's main gate. A further investigation was requested by Headquarters.

It was provided, and said:

"Respondent, insofar as is pertinent, holds authority to serve points within 12 miles of Crocker, Missouri. Thus, respondent claimed that it could serve the military reservation at Fort Leonard Wood, Missouri inasmuch as the entrance to Fort Leonard Wood was within 12 miles of Crocker, Missouri. However, as noted in the final investigation report, the entrance to Fort Leonard Wood was 12 miles 200 to 250 feet from Crocker, Missouri.

"At the time of the original investigation, the respondent, . . . , claimed he could influence the City of Crocker, Missouri to expand its corporate boundaries to correct this situation. Subsequently, the City of Crocker, Missouri did in fact annex a portion of land . . . .

"Unfortunately, the description of the annexation was made in such a manner that it was impossible for any cartographer to plot the new boundary of the City of Crocker on available maps. Moreover, to my knowledge, a new map was not prepared, and in this regard I contacted the city clerk and city attorney for Crocker, Missouri and the Geological Survey at Rolla, Missouri.

"Nevertheless, with the description of the new annexation of Crocker, Mr. Dale Stevens, Cartographer, U. S. Geological Survey, 901 Pine, Rolla, Missouri, was able to plot part of the new boundary of Crocker, Missouri on an official map (Exhibit F). And the measurement in question (as explained in the original report) was 11 miles, 4880 feet. Mr. Stevens added that this distance may be even less if it was possible to plot the entire boundary of the new annexation to Crocker, Missouri. Therefore, I believe that the distance in question is now less than 12 miles."

Thereupon, a memorandum of review was written by field attorneys recommending that the case be closed. A Washington reviewing attorney reviewed the recommendation and file. He agreed that the case should be closed.

It was. (L & E File #10-72-72)

POLICY:

Negotiating Civil Forfeiture Settlements

"It has recently come to my attention that at the beginning of some conferences, the respondent's attorney has been given the minimum figure assigned to the file and told that you will settle on that basis. This type practice is not negotiation.

"I suggest that each of you reexamine your method of negotiation. I believe it is important to point out to respondent's counsel the amount of gross transportation revenue derived from the documented shipments, then taking into account the reported number discovered and projecting the gross revenue figure into those shipments; the possible forfeiture exposure at $500 per count from the documented and the same type calculation in regard to the discovered shipments. In most instances the first figure should come from the respondent's counsel. If you have then a counter figure, it should be realistic in light of the particular file you are dealing with and should not be so high that you will be unable to finally arrive at a reasonable settlement without the appearance of having over-evaluated the particular file.

"The reason that I find it necessary to caution you to reexamine this approach is that one of our attorneys was recently confronted at the beginning of the conference with, 'Are you going to give me the minimum figure assigned to this file? I recently settled one with _____ and he gave me the figure.' Our attorney was somewhat startled by this development, but nevertheless refused to give the figure and proceeded to negotiate a settlement.

"It is important to understand that you will be dealing with these attorneys and while we should be fair in evaluating the file, we do not want to give away the advantage of this type of negotiation." (Bureau of Enforcement Memorandum from Acting Director, dated February 18, 1970, in L & E File #6-72-16)

From Bureau of Enforcement Memorandum, dated February 10, 1975, commenting on GAO Draft Report entitled "Compliance and Enforcement Aspects of ICC's Regulation of Rail and Motor Carriers Need Improvement"

". . . . The minimum (civil forfeiture) amount so specified (by field attorneys) is reviewed by me and, in some cases, may be increased or reduced primarily to bring the amount into line with a more uniform national approach." (Parentheses added)

MANY RESPONDENTS SEEMED TO BE ACCORDED INCONSISTENT TREATMENT.

For Example:

Respondent had gross revenues of approximately $75,000. A licensed carrier, it had not been the subject of prior ICC complaint action. 18 unauthorized transportation violations were documented against it involving illegal revenues of approximately $150. A minimum civil forfeiture of $1,000 was recommended and approved "in view of respondent intentionally showing improper origin" on its shipping documents. Respondent agreed to a $1,500 settlement. (L & E File #8-72-49)

Respondent, a licensed carrier, had gross revenues of approximately $269,000. 26 unauthorized transportation violations were documented against it, resulting in illegal revenues of around $25,000. Respondent previously had paid a civil forfeiture of $1,500 for unlawful transportation violations. According to the Washington reviewing attorney, respondent misrepresented the description of the commodities on his shipping documents "presumably to avoid detection." Respondent had an application pending for authority to haul the commodities in question, and there was an apparent inadequacy of authorized carrier services during the period of time concerned.." The case was closed. (L & E File #3-72-48)

Respondent had gross revenues of approximately $371,000. A licensed carrier, 18 unauthorized transportation violations were documented against it, resulting in around $4,300 in illegal revenues. 50 violations had been discovered, with $12,000 in illegal revenues projected. Respondent had received a $2,000 fine ($1,200 suspended) in a prior criminal conviction for violating the Interstate Commerce Act. Field attorneys recommended a minimum forfeiture of $1,600 for 16 violations. Headquarters raised this to $3,000 in view of respondent's attempt to cover up the illegal shipments. "This falsification should not go unrewarded," Headquarters stated. Respondent settled for $3,000.
(L & E File #7-72-17)

Respondent had gross revenues of approximately $750,000. A licensed carrier, respondent had not been the subject of prior compliance action. 10 unauthorized transportation violations were documented against it involving illegal revenues of around $3,800. A minimum civil forfeiture of $1,500 was recommended and approved in view of the respondent conducting his unlawful operations prior to, during and after the denial of its application for authority. A settlement for $1,500 was agreed to.
(L & E File #15-72-37)

Respondent, a licensed carrier, had gross revenues of approximately $500,000. 25 unauthorized transportation violations were documented against it, resulting in around $1,500 in illegal revenues. Respondent previously paid a forfeiture of $1,100 for performing unauthorized transportation, according to the memorandum of review, "in spite of the fact that both its emergency temporary authority and temporary authority applications to serve Whippany Paper Co., Inc., from Whippany, New Jersey, to points in Nassau and Suffolk Counties, New York, had been denied by the Commission because of safety." The Bureau of Enforcement had intervened on the basis of fitness in respondent's Sub-8 application to obtain extension of its contract carrier authority. Field attorneys recommended a $1,500 minimum civil forfeiture for 25 violations. Headquarters closed the case stating:

> "It is observed that the carrier presently holds appropriate commodity and territorial authority to cover these shipments and that most of the documented violations are more than one year old. Since the only missing ingredient would be the direct authority to contract with Whippany Paper Board Co., these violations might appear to a reviewing court to be somewhat technical. In view of the above, I believe participation in the Sub-8 application should be sufficient."
> (L & E File #2-72-12)

Respondents had gross revenues of approximately $25,000 and $1 million, respectively. Each was charged with 10 unauthorized operations violations. Each agreed to a $750 civil forfeiture settlement.
(L & E File #15-72-29)

Respondent's gross revenues were not determined. They were charged with 10 unauthorized transportation violations and aiding and abetting same, respectively, for which $1,282 in illegal revenues was received. The second respondent had forfeited $500 previously as an aider and abetter in another proceeding. The other respondent, an ICC licensed carrier, had no noncompliance history. $1,000 minimum forfeitures were recommended and approved for each. A settlement was agreed to for $1,000 against the second respondent, and for $500 less from the first respondent "in view of the size of his operation; and it is further believed that such a forfeiture should have a lasting effect. . .in that he would not participate in these type violations again." (L & E File #10-72-83)

Respondent, a licensed carrier, had gross revenues of approximately $255,000. 14 unauthorized transportation violations were documented against it, resulting in illegal revenues of around $660. 140 violations had been discovered, with projected illegal revenues of $6,600. Field attorneys recommended a $1,000 minimum civil forfeiture. Headquarters closed the case, advising as follows:

> "In view of the minimal economic nature of these operations coupled with their discontinuance, it does not appear that formal enforcement action is warranted in this instance."
> (L & E File #3-72-21)

Respondent had gross revenues of approximately $351,000. A licensed carrier, violations of 62 household goods regulations were documented against it. Respondent had been the subject of one prior investigative report. A minimum forfeiture of $2,000 was recommended by field attorneys for 20 violations. Headquarters raised this to $3,000 and the violations changed to 30. Respondent claimed he was being treated too harshly and asserted financial losses. The trial attorney also started the negotiations at the minimum figure which, according to the Bureau, was "in effect a take it or litigate type of approach rather than negotiation." As a result, the minimum was lowered to $2,000. Respondent settled for this amount.
(L & E File #6-72-16)

Respondent, a nonlicensed carrier, had numerous ICC investigative actions taken with regard to unlawful transportation; had been fined in a criminal action and also paid a civil forfeiture for similar illegal activities. Two unauthorized transportation violations were reported with evidence. Field attorneys recommended that they not be prosecuted. The memorandum to close contained the following information:

> ". . . had been somewhat impervious to regulatory control. He is not in the least cooperative and generally refuses to submit any documents for examination. However, when 'caught' he tacitly admits the violations when the facts are certain and definite . . . .
>
> "Looking at the matter objectively, it would appear that the Bureau would be fully justified in instituting further enforcement action. However, looking at the case subjectively, it is my

> position that the overall impact does not present a situation having any significant redeeming features . . . . To me this case presents a marginal situation because of the past violations of the respondent and his general attitude toward regulation . . . .
>
> "It is my thinking that over the period of the next year or two, should . . . continue his 'occasional' for-hire transportation in interstate commerce, we could accumulate a sufficient number of offenses to support a civil injunction action with a view of subjecting . . . to contempt proceedings if such judicial restraint does not convey the word to him."

Headquarters agreed, stating as follows:

> ". . . in this investigation no effort was made to examine respondent's records. I do not see the integrity of this agency being maintained by initiating an enforcement action on the basis of the limited facts developed during this investigation. The urging by . . . that we must put aside the economic impact criteria is not at all convincing when this agency is asked to conserve its resources . . . ." (L & E File #15-72-5)

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Respondent had gross revenues of around $1.1 million. A licensed carrier, 9 unauthorized transportation violations were documented against it for which around $2,400 had been received in illegal revenues. There was no record of ICC prosecutive action taken against respondent. A minimum forfeiture of $900 for 9 violations was recommended by field attorneys. Headquarters raised this $100 in view of the size of the carrier and respondent's attempt to mislead the investigator with regard to how many unlawful shipments had been handled. Respondent settled for $1,200.
(L & E File #10-72-86)

Respondent had gross revenues of approximately $177,000. A licensed carrier, it was charged with 9 documented unauthorized transportation violations for which around $3,000 in illegal revenues were received. 10 years earlier, respondent had paid a $500 criminal fine for unlawful transportation. Field attorneys recommended a minimum civil forfeiture of $900. Headquarters raised this $100 in view of the size of the carrier and gross revenues from the unlawful transportation. Respondent settled for $1,000.
(L & E File #4-72-39)

Respondent had gross revenues of approximately $55,000. An unlicensed operator with two, 20 foot Econoline type vans, 68 unauthorized transportation violations were documented against him, for which around $700 in illegal revenues was received. He had no record of ICC prosecutive action. Field attorneys recommended, and Headquarters approved, a $1,000 minimum forfeiture for 10 violations, in view of 1,000 shipments discovered, the size of the carrier and revenues received. Respondent settled for $2,000.
(L & E File #16-72-16)

Respondent, a licensed carrier, had gross revenues of approximately $18 million. 17 concession violations were documented against it, resulting in $1,400 in undercharges. Respondent had been the subject of numerous ICC investigative actions and, within the past two years, had forfeited $2,200 in two separate proceedings. Field attorneys recommended that the case be closed because "no determination was made as to who handled this billing or why it was accomplished in this fashion. In any event, the violations were relatively few in number, took place over a very short period of time, and were apparently terminated with the effective date of the tariffs Nos. 237 and 238 . . . . Furthermore, we plan to use the evidence contained in the instant investigation in a fitness proceeding involving (respondent)." Headquarters agreed. The case was closed.
(L & E File #7-72-32)

Respondent had gross revenues of approximately $1.4 million. A licensed carrier, it transported 176 shipments without cargo liability insurance violations, 10 of which were reported with evidence. It had been investigated previously for a similar violation. A minimum forfeiture of $500 was recommended by field attorneys for 5 violations. Headquarters raised this to $1,000 "in view of the size of the carrier, its history of insurance problems and the length of the lapse." A settlement of $750 was agreed upon because respondent was "relatively small, not in a strong financial position, and no shipper appears to have been injured." In addition, since respondent had experienced a financial setback due to a $16,000 cargo loss not covered by insurance, the Bureau felt that "at its size a $16,000 loss can be the difference between success or failure. Also, it will have legal fees."
(L & E File #12-72-47)

Respondent, a licensed carrier, reportedly had gross revenues of around $25,000. 13 unauthorized transportation violations were documented against it, resulting in illegal revenues of approximately $3,100. A civil injunction action was taken against it, primarily because it was a first offense, it had small gross revenues and was a "fledgling" carrier.
(L & E File #12-72-58)

Respondent, a licensed carrier, had gross revenues of approximately $35,000. 15 unauthorized transportation violations were documented against it, resulting in illegal revenues of around $3,600. Respondent had a temporary application pending during the time of the shipments in question. It was dismissed for failure to file the rates. It was finally issued subsequent to the documented shipments. In his recommendation to close, the trial attorney stated that:

> "I believe that the institution of formal court action would serve no useful purpose. It is highly unlikely that any court would award more than a token fine. . . . If (respondent) performs unlawful operations in the future, then we have already extended to him a warning and would have no problem seeking court sanctions. Owing to the minor economic impact of the facts presented. . . the lack of previous noncompliance history on the part of the respondent, and the presence of authority which presently covers the described activities, I recommend that the file be closed."
> (L & E File #9-72-8)

Respondent, a licensed carrier, had gross revenues of approximately $20.7 million. 12 tariff violations were discovered and documented against it. Respondent had been the subject of previous enforcement actions for violations of the same type, had been criminally convicted and fined, and had been enjoined by the Courts. Another case involving substantially the same type of violations had been closed just a short time before because the Commission was considering another proceeding involving similar activities.

The case was closed because of "difficulty in sustaining knowledge and willfulness, coupled with the fact that recompensation occurred negating the economic effect of the questioned violations."
(L & E File #6-72-3)

Respondent had gross revenues of approximately $15,000, engaged in business as an individual and operated from his residence. He operated two tractor trailer units for hauling automobiles. An unlicensed operator, 20 unauthorized transportation violations were discovered against respondent and 16 documented, resulting in around $4,500 in illegal revenues. Respondent had received prior Commission warnings regarding such violations, but had not been prosecuted by it previously. Criminal action was recommended by field attorneys and approved by Headquarters. Respondent was fined $1,000 ($500 suspended), and placed on probation for 3 years.
(L & E File #6-72-17)

Respondent had gross revenues of approximately $268,000. A licensed carrier, 21 violations of household goods regulations were documented against it, for which around $1,500 in illegal revenues was received. The respondent had not been the subject of any Commission criminal or civil proceedings. Field attorneys recommended a minimum forfeiture of $400 for 4 violations. Headquarters raised this to $1,000 for 12 violations. A $400 settlement was agreed upon because, among other reasons, the respondent appeared "quite forthright, honest and sincere;" "was also quite upset concerning the Commission's claims;" and, "promised absolute compliance with our regulations hereafter."
(L & E File #3-72-34)

Respondent had gross revenues of approximately $246,000. A licensed carrier, 28 unauthorized transportation violations had been documented against it, resulting in around $2,300 in illegal revenues. There had been no previous Commission enforcement action taken against this carrier. Field attorneys recommended a $1,000 forfeiture for 20 violations--an average of $50 per violation. Headquarters raised this $500 in view of the carrier's size and his prior administrative handling. Respondent settled for $1,500.
(L & E File #6-72-86)

Respondent had gross revenues of approximately $36,000. A licensed carrier, 16 unauthorized transportation violations were documented against it, for which around $3,350 had been received in illegal revenues. There was no record of ICC prosecutive action taken against respondent. Field attorneys recommended, and Headquarters approved, a minimum civil forfeiture of $1,000 for 10 violations. Another respondent, a shipper, was joined in the same action for aiding and abetting. It had gross revenues of approximately $900,000. It had received around $2,200 in illegal revenues from 11 of the 16 documented violations against it. Field attorneys also recommended, and Headquarters approved, a $1,000 minimum forfeiture for this respondent which had received no prior ICC handling. The first respondent settled for $1,000; the second, for $1,250.
(L & E File #10-72-22)

Respondent, a licensed carrier, had gross revenues of approximately $1 million. 14 unauthorized transportation violations were documented against it, resulting in illegal revenues of around $3,500. Projected illegal revenues for the total number of discovered violations was $15,750. Field attorneys recommended a minimum forfeiture of $2,500 "in view of the size of the carrier, the scope of unlawful operations and the flagrancy of the violations." Headquarters approved, and negotiations began. Because of these forfeiture claims, respondent submitted temporary authority applications to cover the kind of shipments in question. It also advised that it would not transport the petroleum products in question unless, and until, it first obtained authority to do so. As a result, the Bureau closed the case.
(L & E File #13-72-25)

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* * * Those with gross revenues exceeding $250,000 represented 77% of those with prior Interstate Commerce Act convictions. 96% of those dropped from prosecution who had prior Interstate Commerce Act convictions were in this financial category.

* * * Those with gross revenues of less than $250,000 represented 23% of those with prior Interstate Commerce Act convictions. 4% of those dropped from prosecution were in this financial category.

* * * 34% of those with prior Interstate Commerce Act convictions and gross revenues of less than $250,000 were not prosecuted.

* * * 56% of those with prior Interstate Commerce Act convictions and gross revenues exceeding $2 million were not prosecuted.

* * * Those convicted of prior Interstate Commerce Act violations paid an average of $112 per count in fines and forfeitures--$4 less than those with no prior convictions.

* * * The Commission developed evidence on 10% more violations (counts) for those prosecuted with gross revenues of less than $100,000 than it did for those prosecuted with gross revenues exceeding $500,000.

* * * The Commission developed twice as many violations with evidence against those prosecuted with gross revenues of less than $25,000 than it did against those with gross revenues exceeding $2 million.

* * * The percentage of those with gross revenues exceeding $1 million who were dropped from prosecution for unauthorized transportation violations was 2-1/2 times greater than for those with gross revenues of less than $50,000.

* * * Those with gross revenues exceeding $500,000 were penalized an average of $117 per count in civil forfeiture settlements for unauthorized operations violations--$7 less than the per count average penalty assessed against those with gross revenues of less than $250,000.

POLICY:

From Bureau of Enforcement Memorandum of Instruction No. E-14 dated September 20, 1970:

"6. PROCEDURE FOR REINVESTIGATION AFTER SUCCESSFUL ENFORCEMENT ACTION

(A) After the successful conclusion of a court or Commission proceeding the field staff of the Bureau of Operations will conduct a compliance check in the following instances to determine whether the unlawful activity has been terminated, modified or resumed:

(1) Where a civil injunction is entered;

(2) Where a cease and desist order is entered;

(3) Where a defendant is placed on probation;

(4) In criminal cases (other than where probation is imposed), and in civil forfeiture cases (whether disposed of by judgment or by claim settlement agreements) when justified in the opinion of the Regional or Assistant Regional Counsel and Regional or Assistant Regional Director.

(B) Where the successful enforcement action results in (a) a civil injunction, (b) a cease and desist order or (c) probation for the defendant, the Regional or Assistant Regional Counsel will notify the Regional or Assistant Regional Director that a field reinvestigation of the parties is required pursuant to existing instructions. The assignment for reinvestigation will then be

made by the Regional or Assistant Regional Director to the appropriate District Supervisor.

(C) After the successful conclusion of a criminal case (where probation is not imposed), or a civil forfeiture matter, the Regional or Assistant Regional Counsel will either (a) advise the Regional or Assistant Regional Director as in B above, that a field reinvestigation is requested by the Bureau of Enforcement, or he will (b) advise the Regional or Assistant Regional Director (by indicating on the Form 34 notifying of the closing of the case) that a reinvestigation is unnecessary and the reason therefor. If the opinion of the Regional or Assistant Regional Director differs from that of the Regional or Assistant Regional Counsel he will so advise the Regional or Assistant Regional Counsel and they shall resolve the matter among themselves.

(D) When the District Supervisor receives an assignment from the Regional or Assistant Regional Director for reinvestigation of such cases, and is of the opinion that for good reason it should not be made, he will so advise the Regional or Assistant Regional Director who will consult with the Regional Counsel or Assistant Regional Counsel and reach a final decision on whether the reinvestigation will be conducted.

(E) Reinvestigation shall not commense before three months have elapsed, after the enforcement action is concluded, unless need for more prompt attention is indicated.

(F) An extra copy of the completed report on such subsequent investigation should be submitted to the Regional or Assistant Regional Counsel for transmission to this office with a reference to the proper E or A-file.

* * * Reinvestigations were not requested on 89% of those successfully prosecuted.

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* * * 93% of those successfully prosecuted via civil forfeitures were not followed up by reinvestigation requests.

* * * 77% of those successfully prosecuted via criminal actions were not followed up by reinvestigation requests.

* * * 26% of those successfully prosecuted via civil injunctions were not followed up by reinvestigation requests.

* * * According to Headquarters and field records, 44% of those slated for mandatory reinvestigation after being successfully prosecuted were not re-investigated.

* * * 18% of the reinvestigations that did occur resulted in new BOp 26 Reports with evidence of continuing violations. 40% of these violators were not prosecuted again.

". . . and with some duplication of effort."

POLICY:

From a Memorandum entitled "Enforcement Program--Revision of Operating Procedures and Delegations to the Field Level" dated July 9, 1970, from Office of the Vice Chairman:

"In considering the classification of certain key technical positions in the field and in the interest of a more efficient and effective enforcement program, it is my decision that some changes are required in present operating procedures and delegations to the field level. Accordingly, it is requested that you prepare for my approval the necessary changes in the operating instructions of your respective bureaus to effect the following . . . .

1. Elimination of the preliminary "36" investigation reports. Extend the modified procedure to all types of motor, water, forwarder, and broker investigations, with appropriate conditions to provide preliminary reporting by trainees, new employees, and in other situations, such as are shown in paragraph 20(b) of Operations Manual L-8.

2. Elimination of the Regional Director from the present joint delegation of authority to institute certain enforcement cases in the field.

3. Delegation of authority to Regional Counsels (as to violations of Parts II, III, and IV of the Act and regulations thereunder) to institute court enforcement actions and to settle civil forfeiture cases without a 10-day stay period, except enforcement matters which: involve a precedent-making issue; present novel or unusual questions of law or fact; are of substantial importance to the enforcement program; or are of a nature which the Regional Counsel feels should be sent to the Bureau Director for decision.

4. Elimination of the 10-day waiting period and the duplicate Washington office review of the court and civil claims cases to be prosecuted by the Regional Counsels." (emphasis added)

Commission Internal Minute No. 71:

"CRIMINAL PROSECUTIONS, AND CIVIL FORFEITURE AND INJUNCTION PROCEEDINGS

(A) The director of the Bureau of Enforcement is authorized to recommend to the Department of Justice or to the United States Attorneys institution of criminal proceedings, civil forfeiture penalty suits, or civil injunction proceedings for violations of the Interstate Commerce Act, related acts or supplementary acts administered by the Commission, and to institute civil injunction proceedings which the Commission is empowered to institute in its name under the provisions of Part I, II, III, or IV of the Interstate Commerce Act. The Commission reserves to itself the determination of what further action, if any, should be taken in the event a federal court of appeals renders a decision adverse to the Commission's position in a criminal or civil proceeding that was initiated by the director of the Bureau of Enforcement.

(B) The director of the Bureau of Enforcement as the Commission's designee is authorized, within the framework of the Federal Claims Collection Act of 1966, the applicable standards promulgated by the Attorney General and the Comptroller General, and pursuant to Commission procedure to compromise, suspend or terminate enforcement claims arising under the civil penalty or forfeiture provisions of the Interstate Commerce Act, Elkins Act and amendatory and supplemental legislation related to such acts.

(C) The director of the Bureau of Enforcement is authorized to intervene on behalf of the Commission in any civil action instituted by private persons under the provisions of Section 222(b)(2) and Section 417(b)(2) of the Interstate Commerce Act and to notify the court in which such an action is brought that the Commission has instituted or has pending before it a recommendation to institute an administrative proceeding which will

embrace the same subject matter as is involved in the court action. (See also Internal Minute 96).

(D) In the exercise of this authority the director is instructed to seek the advice, counsel, and guidance of the Vice-Chairman in precedent-making cases, cases presenting novel or unusual questions of law or fact, and cases of substantial importance to the enforcement program.

(E) The director is authorized to sub-delegate the foregoing authority under plans which meet the approval of the Vice-Chairman."

From Bureau of Enforcement Memorandum of Instructions No. E-14, dated September 20, 1970:

"1. GENERAL

By Internal Minute No. 71(A) to (E), inclusive, the Commission delegated to the Director of the Bureau of Enforcement certain authority with respect to the institution of criminal and civil court enforcement proceedings. The minute also authorizes the Director to sub-delegate the foregoing authority under plans which meet the approval of the Vice Chairman and instructs the Director to seek the advice, counsel, and guidance of the Vice Chairman in precedent-making cases, cases presenting novel or unusual questions of law or fact, and cases of substantial importance to the enforcement program.

The Vice Chairman has approved the instructions contained in this memorandum.

"2. AUTHORIZATION TO THE FIELD TO INSTITUTE COURT ACTIONS UNDER CERTAIN CONDITIONS AND TO CLOSE INVESTIGATION FILES

(A) Regional Counsel and Assistant Regional Counsel of the Bureau of Enforcement are authorized to take the following action:

(1) To recommend to the United States Attorneys institution of criminal prosecutions in matters involving violations of Parts II, III and IV of the Act and regulations thereunder;

(2) Subject to the prior attempt, where required by the Federal Claims Collection Act of 1966 to administratively settle civil forfeiture claims, to recommend that the Department of Justice be requested to institute civil forfeiture proceedings under Section 222(h) of the Act;

(3) To institute civil injunction proceedings in matters involving violations of Parts II, III and IV of the Act and regulations thereunder; and

(4) To close any investigation file (in accordance with established policies) without institution of court or administrative proceedings.

(B) The authorizations in (A) above shall not extend to the following types of cases:

(1) Any case believed to involve a precedent-making issue.

(2) Any case which presents novel or unusual questions of law or fact.

(3) Any case deemed to be of substantial importance to the enforcement program.

(4) Any case which the Regional Counsel believes should be sent to the Bureau Director for decision. (If the Assistant Regional Counsel believes a case should be referred to the Director, such recommendation should be made through the Regional Counsel).

"3. PROCEDURE IN CASES APPROVED IN THE FIELD

When an action is to be taken in the field as authorized in 2(A) above, all necessary pleadings and supporting documents will be prepared and a criminal information presented or a civil complaint filed within 15 working days after the time a 'Notice of Pending Enforcement Action', with a copy of a memorandum of review prepared in accordance with existing instructions, is mailed to the Director of the Bureau of Enforcement. . . . During the 15 working day period he will proceed with the preparation and filing of the case without any additional authorization from the Washington office. To the extent appropriate, the Director of the Bureau will advise him of such

matters as recent cases or policy positions, national implications, conflicts with other pending cases, or any other information deemed to be valuable for the successful prosecution of the case.

"4. PROCEDURE IN CASES NOT AUTHORIZED FOR FIELD APPROVAL

When a case is of the kind described in 2(B) above, or in an area not included in the sub-delegation, the decision will be made by the Bureau Director. The field recommendation will be submitted in the form of a memorandum to the Director, prepared in accordance with existing instructions."

Note: All civil forfeiture cases under Parts II, III and IV of the Interstate Commerce Act and regulations thereunder which are prepared by field attorneys still must receive Washington office review and prior approval by Headquarters before claim negotiations may proceed.

MOST OF THE PRINCIPAL RECOMMENDATIONS OF FIELD ATTORNEYS WERE AGREED TO BY HEADQUARTERS STAFF TO WHOM THEY REPORTED.

* * * Recommendations of field attorneys concerning the nature of the violations to be charged and the type of enforcement action to be taken were agreed to by Washington reviewing attorneys 90% of the time and by the Director's Office 90% of the time.

* * * The Director's Office was in agreement 66% of the time with the civil forfeiture monetary recommendations of the field attorneys. Differences that did exist over minimum assessments involved a net total of $42,850.

* * * 3 out of every 5 enforcement cases were sent by field attorneys to Headquarters as routine cases--that is, they did not involve a precedent-making issue; they did not present a novel or unusual question of law or fact; and, they were not deemed to be of substantial importance to the enforcement program.

* * * 96% of the civil forfeitures were imposed through out-of-court settlements.

RECOMMENDATIONS

The data on the preceding pages lends itself to a multiple number of suggestions--from slight revisions in operating instructions concerning specific financial information which investigative reports should contain about respondents, to more significant revisions in the Commission's Minutes to provide for a neutral authority which would rule on disputed case closings. A host of such modifications could be set forth.

However, much as they might benefit the compliance program, as auxiliaries, they would not address more central issues that underly the preceding pages. These pertain to policy.

The manuals of the Bureaus of Operations and Enforcement are an outstanding compendium of how to accomplish the myriad tasks involved in handling investigations and prosecutions. Few guidance gaps are apparent. They are informative, thorough and concise--an ideal and continuing reference source for the neophyte and experienced, both.

But manuals on "how" are no substitute for policies on "what," "why" and "who." These must emanate first, then undergird all that follows. Despite allusions to Commission policy in writings of both Bureaus--for example, in speaking of the five investigative/enforcement priority categories--its presence seems amorphous and difficult to pin down. A more detailed, formalized pronouncement of Commission

compliance objectives vis-a-vis its organic statutes and resources would provide greater program illumination and impact, while, at the same time, better shape and guide its course. The recommendations that follow speak to this need.

I

That the Commission redevelop its national compliance policy based upon its national transportation mission and the fiscal resources allocated by Congress to carry it out. In reformulating such policy, the Commission should conduct a broad survey to ascertain the socioeconomic impact of surface carriers both subject to and outside the scope of its jurisdiction, so that program objectives and implementation will rest upon the most recent, salient aspects of public interest and need.

II

That the Commission develop a comprehensive program to implement this revised national compliance policy, including written priorities, criteria and guidelines which will govern the nature and quality of its investigations, the manner in which they are brought to prosecutive finality and the deterrent effect such actions are designed to achieve.

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III

That the Commission insure a single voice to carry out and coordinate its compliance policies, with full investigative and prosecutorial functions subdelegated to appropriate field personnel, so that program resources can be more effectively planned and utilized.

Mr. CORBER. Mr. Chairman, could I just to complete the record on whether as a member of the Commission I saw what has been identified as the Arnold Smith report at any time, Commissioner O'Neal has stated that he has seen it, I would like to affirm for the record that I, too, saw it about the time that the blue ribbon staff panel was given the direction by the chairman to proceed with the study.

Mr. Moss. All right.

Mr. BROWN. Chairman Stafford, I would now like to delve into the specific recommendations and conclusions in the report entitled, "Report on the Commission's Compliance Program" [Fitzwater report] prepared by the Staff Study Panel on Regulatory Reform. Do you have a copy of that document before you?

So that we do not have to go over the methodology of the report, Mr. Chairman, I would ask that a letter from Mr. Alan M. Fitzwater, who headed up this panel, be included in the record. The letter discusses the qualifications of the members of the panel and the methodology employed by the panel.

Mr. Moss. In accord with the previously agreed unanimous consent, the letter will be entered in the record.

[The letter referred to follows:]

Interstate Commerce Commission
Washington, D.C. 20423

RAIL SERVICES PLANNING OFFICE

February 20, 1976

Mr. Lester Brown
Oversight and Investigations Committee
House Interstate and Foreign Commerce
Committee
House Annex Number 2
Second and D Streets, SW
Washington, DC 20515

Dear Mr. Brown:

As requested, I am furnishing the following description of the procedure followed by the Staff Study Panel in conducting the study which resulted in the Report on the Commission's Compliance Program.

First, I believe it is important to note the consist of the Panel and the backgrounds of its members. I am the Director of the Rail Services Planning Office, I have served in various capacities at the Commission since 1965. Robert S. Burk is presently the Deputy General Counsel. He has 20 years of experience in transportation law both in Government and private practice. Thomas J. Byrne is Assistant to the Director of the Bureau of Operations. He has a total of 29 years experience in the compliance program at the Commission and an additional 15 years with the railroad. He is generally regarded as one of the Nation's foremost experts in railroad car service. Kenneth R. DeJarnette is an economist in the Bureau of Economics. He has a total of 23 years in various transportation-related positions in industry and Government. He also served on the first Staff Study Panel. Robert G. Rhodes is the Assistant Director of the Bureau of Economics. He has 17 years experience at the Commission and has been involved in transportation-related positions for another 11 years.

The Panel's report was developed from two basic sources: past studies on the Commission's compliance program and over 150 confidential interviews with Commission personnel, attorneys in private practice, shipper and carrier representatives.

The Panel first reviewed past studies, reports and manuals of instruction related to the compliance program. Included in this material were studies prepared internally and by consultants for the Commission, a study by Ralph Nader, and a draft of a yet-to-be-published study by the General Accounting Office. After reviewing this material, the Panel prepared a listing of subjects to be discussed in the course of its interviews. At this time, the Panel also composed a letter to all Commission employees involved in the compliance program inviting them to either submit comments in writing

Mr. Lester Brown

or arrange for a personal interview with the Panel. Included in this letter was a listing of questions designed to stimulate comment on all aspects of the compliance program.

The Panel conducted its interviews both at headquarters and in the field. Headquarter's interviews were conducted by the full Panel; field interviews were conducted by teams of two Panel members. Most of those interviewed appeared alone before the Panel except for a few individuals who were interviewed simultaneously either at their request or the Panel's invitation. Every individual appearing before the Panel was assured that his comments would not be attributed to him.

During the course of the headquarter's interviews, the bureau directors, assistant bureau directors, and section chiefs involved in the compliance program were interviewed. In addition, the Panel interviewed most other supervisory personnel from the three bureaus and anyone else who had indicated an interest.

Teams of two Panel members visited every major field office of the Commission. At each location, employees were given advance notice that the Panel members would be visiting their office and were offered the opportunity to meet with the Panel members during their visit. The following cities were visited: Boston, New York, Philadelphia, Pittsburgh, Columbus, Atlanta, Fort Worth, Kansas City, Chicago, Denver, Los Angeles, San Fransisco, Portland, and Seattle. Every regional manger, regional director, regional counsel and regional auditor was interviewed as were the officers in charge of all major field offices. In addition, interviews with attorneys in private practice, shipper and carrier representatives were conducted at many of the locations.

In addition to the formal interviews, each Panel member made use of every opportunity presented to him in the course of carrying out his regular Commission responsibilities to gather additional information and to make known the Panel's interest in receiving all comments and suggestions which anyone might have. Throughout the course of the study, the Panel maintained professional objectivity, and conclusions were not discussed until the beginning of the fourth month, after the completion of three months of study and interviews.

The final report resulted from a series of meetings during September at which the Panel members reviewed all of the information compiled in the preceding three months. The Panel's findings and recommendations were not revealed to or with anyone prior to the submission of the Report to the Chairman. All of the Panel members were in agreement with the conclusions reached by the Panel.

Sincerely yours,

Alan M. Fitzwater
Chairman
Staff Study Panel

Mr. STAFFORD. Mr. Chairman, just to be sure that the record is clear, I asked Alan to head up this staff committee to make this blue ribbon study so that the Commission could use it for its internal working to work out whatever problems were involved so that it does not appear that there is some effort being made to——

Mr. BROWN. Mr. Chairman, at this time, too, I would like to introduce into the record the Chair's letter to Chairman Stafford dated January 26, 1976.

Mr. MOSS. Under the previously agreed unanimous consent the letter is admitted in the record at this point.

[The letter follows:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., January 26, 1976.

HON. GEORGE M. STAFFORD,
Chairman, Interstate Commerce Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: The Subcommittee welcomes the opportunity to have you and your colleagues on the Commission as witnesses next Monday for our regulatory-reform oversight hearings on the Interstate Commerce Commission.

We should like to note, however, that we have just received and reviewed the Report on the Commission's Compliance Program, submitted to you on October 8, 1975, by your staff Study Panel on Regulatory Reform. Particularly in view of the fact that compliance and enforcement is central to the Subcommittee's inquiry, the Panel's judgment that "the compliance program operated like a ship without a captain" was most disturbing as was their overall assessment that the compliance program:

"has no overall purpose,"

"[its policy] is reaction rather than action oriented," and

"[it has] very little coordinated effort in significant problem areas."

We should also like to note that the Subcommittee is studying the costs of regulation. A very real but hidden cost to the consumer, small businessman and the taxpayer may well result from what your report clearly describes as a massive failure of regulatee compliance with the law:

Major areas of regulatory concern are virtually untouched by our enforcement program. Redirection is imperatively needed.

. . . the large majority of investigations conducted and cases concluded involve operating rights violations against extremely small motor carriers (less than $300,000 annual revenues), which have little economic impact. Typically, they are easy to develop and are made to satisfy the requirements of the 'numbers game.'

"Our field interviews revealed wide agreement that significant tariff, Elkins Act, unlawful control, demurrage and detention, and Clayton Act violations exist in quantity. The investigatory effort, however, is simply not directed toward developing them, and, in many instances, the 'numbers game' precludes investigators from devoting the time necessary for their development."

We are sure you agree that in view of the Commission's special, historic relation with the Congress, the fullest and most candid exchange of views with its oversight committees is vital. In particular, please be assured that the matter of Commission compliance and enforcement will be in the forefront of the Subcommittee's agenda. The Subcommittee will expect to hear your action program for "program redirection" the Panel found to be "imperatively needed."

Sincerely,

JOHN E. MOSS,
Chairman.

Mr. BROWN. Chairman Stafford, I will be addressing some of my questions to the sections of the report included in the chairman's letter to you so that it will be easier for you to identify them.

Mr. STAFFORD. I might add that most of this paperwork is material that I have which is really outside the reports. I have left it to the staff people to work with in an effort to get on with it.

Mr. BROWN. As you know, Mr. Chairman, central to this subcommittee's investigation and final report to the Congress on the need for regulatory reform is the careful examination of each agency's enforcement and compliance program. In developing the public record therefore, your reaction to specific findings and recommendations contained in this report is essential.

The panel found—and this is included in the chairman's letter to you on January 26—that:

> Our field interviews revealed wide agreement that significant tariff, Elkins Act, unlawful control, demurrage and detention, and Clayton Act violations exist in quantity. The investigatory effort, however, is simply not directed toward developing them, and, in many instances, the 'numbers game' precludes investigators from devoting the time necessary for their development.

Further:

> * * * the large majority of investigations conducted and cases concluded involve operating rights violations against extremely small motor carriers (less than $300,000 annual revenues) which have little economic impact. Typically, they are easy to develop and are made to satisfy the requirements of the "numbers game."

And, more generally:

> Major areas of regulatory concern are virtually untouched by our enforcement program. Redirection is imperatively needed.

Chairman Stafford, do you have any reason to believe that the findings and conclusions I have just read to you are untrue?

Mr. STAFFORD. No. I have no reason to believe they are untrue or true. I have asked the best people we have on staff level to make this study. Just let me make one little caveat there. I have no doubt that a majority of these cases dealt with the small carriers, as you called it, $300,000 and under gross carrier. Part of this can come about by the fact that by far and large the greatest majority of carriers we have are in that category so there is some basis for a percentage being in that way.

Mr. Brown. May I also ask you, Chairman Stafford, if these findings and conclusions listed above support the findings, conclusions, and recommendations contained in the study about the compliance program [Smith report] which predated the Fitzwater study.

Mr. REBEIN. The previous study bore no conclusions or recommendations, it was strictly a statistical analysis.

Mr. BROWN. If I may read from the study, I would like to point out several items which you may wish to comment on. I am again referring to the report about the ICC's compliance program [Smith report]. I don't know what you want to call it if it is not a conclusion or a finding, but one of the headline areas states that "Many civil forfeiture settlements seemed to have dubious deterrence value." This is on page 69 of the Smith study.

Mr. Moss. In order that the record reflect this accurately, we will call this the Smith study and it is page 69.

Mr. REBEIN. This was an unusual type of analysis, and while it appears that the headings there have conclusions therein, it only is to reflect those cases which are cited thereafter and there could

be other cases on the other side. We are trying to be just as fair and as impartial as possible.

Mr. BROWN. If the Commission would like to submit for the record the exact methodology of this report, I think that would be helpful.

Mr. STAFFORD. All right.

Mr. BROWN. I would like to move on.

Mr. MOSS. To clarify that point, does the Commission desire to submit the memorandum setting forth the methodology in the report?

Mr. REBEIN. Yes, I think they should have it.

Mr. MOSS. Then under the previously agreed unanimous consent the record will be held at this point to receive that submission.

[The following information was received for the record:]

METHODOLOGY UTILIZED IN SMITH STUDY

The study examined one facet of the Commission's Compliance Program—that which begins with the discovery and reporting of alleged violations, and ends with court enforcement to prevent their reoccurrence. It concentrated primarily on motor carriers, although some areas of rail compliance also were considered.

Calendar Year 1972 was selected as a study period, and all available Bureau of Enforcement files in Washington were digested. Approximately 800 cases were read, comprising 1,047 respondents whose violations were investigated and reported with evidence. Investigative reports without evidence, on file in Regional Offices for the same period, were read, too. There were 1,163 respondents concerned in those latter investigations. Pertinent factual information from these investigative reports and from documents in these case files was recorded on data sheets.

These data sheets were devised to show the major steps that occur in the processing of an investigation, from its inception in the Bureau of Operations through prosecution by the Bureau of Enforcement, and the reasons or criteria that govern such handling of each stage in the compliance pipeline. This information was then tabulated, both by hand and by machine, and then statistically analyzed. Although a wealth of details were obtained from this statistical analysis, only the most salient facts were presented in this study in order to focus on Commission policy and its implementation. The facts were allowed to speak for themselves, no judgments or subjective characterizations were offered with regard to these statistics.

The study was initiated in February, 1974, upon the preparation of an approved data sheet. By June, 1974, all case materials had been digested and recorded. Soon thereafter computer programs were designed to facilitate the tabulation and analysis of this information. By September, 1974, the first compliance study printouts were received and continued to be furnished until March, 1975. Further reviews, research and proofing followed, and the preliminary study report was prepared in May, 1975. A final draft was submitted to the Managing Director in June, 1975.

Mr. STAFFORD. Mr. Chairman, may I add one other point in here. Many of the so-called findings or reports, or whatever you may want to call them, have been, in many instances, strongly objected to by the heads of the departments who administer this program and so we, the Commission, at this moment are in the process of evaluating their comments based on the facts as they see them and the way they run their departments. That is what the Commission would be doing within the confines of its own offices if this material had not become public before your committee. We will be getting into all of these matters as we get on with the study.

The vice chairman at the moment has this whole program before him because these particular individuals report to him as vice chairman, the office of vice chairman, and he will, within the next few weeks, be making a final report to the full Commission as to what his judgment is after having both sides sit before him.

Mr. Moss. Of course, Mr. Chairman, the purpose of oversight is really in many respects a parallel one to the efforts now being made by the Commission.

Mr. STAFFORD. Yes, sir.

Mr. Moss. We have the responsibility. We delegate to you certain parts of our power, but in the delegation we retain the basic powers.

Mr. STAFFORD. Absolutely.

Mr. Moss. And the basic responsibility. It is for that reason that we have entered into this ongoing in-house operation to evaluate it because all of us are aware of allegations made of excessively costly regulation.

Now, let me make it clear that the fact that something is alleged does not convince me of a thing but it does convince me that we must look at the actual practices of the agency.

Mr. STAFFORD. Yes, sir.

Mr. Moss. The committee should draw its own conclusions.

Mr. BROWN. Chairman Stafford, if I may continue, I would like to again reference the Smith report which states on page 80: "Many cases seem to have dubious regulatory value. Few, if any, concerned inadequate service to shippers."

And, on page 91, "Many respondents seemed to have been accorded inconsistent treatment."

I would like to read two of the paragraphs under the topic dealing with the report's findings on inconsistent treatment.

The first states, and I quote: "Those with gross revenues exceeding $250,000 represented 77 percent of those with prior Interstate Commerce Act convictions."

Mr. STAFFORD. What page did you say that was on, sir?

Mr. BROWN. This is page 91.

Mr. STAFFORD. We don't see where that quote is contained.

Mr. Moss. We will find the page for you in just a moment.

Mr. BROWN. I stand corrected. It is page 104.

I would like to read the two paragraphs and I will ask you to comment on each paragraph.

The first is, and I quote:

> Those with gross revenues exceeding $250,000 represented 77 percent of those with prior Interstate Commerce Act convictions. Ninety-six percent of those dropped from prosecution who had prior Interstate Commerce Act convictions were in this financial category.

Chairman Stafford, would you like to react to this statement?

Mr. STAFFORD. Well, I think my reaction would be the same as on the last. The Commission is evaluating all of these reports. We have asked the vice chairman to evaluate not only these reports, but also to have the Bureau Directors, who are directly responsible for the compliance program, to meet with him. That is to hear both sides, and then to prepare a reply to the Commission as to what his judgment is after having spent time with both sides trying to arrive at the decision.

Mr. BROWN. Chairman Stafford, if I may, I would like to read the next paragraph and ask for your reaction once again.

> Those with gross revenues of less than $250,000 represented 23 percent of those with prior Interstate Commerce Act convictions. Four percent of those dropped from prosecution were in this financial category.

Do these findings suggest to you any difference in the treatment of companies with revenues exceeding $250,000 and those with gross revenues less than $250,000.

Mr. STAFFORD. These are the things that the Commission really wants to go into and have them checked out against all the countervailing evidence.

Mr. BROWN. Chairman Stafford, do you have the timetable for this review?

Mr. STAFFORD. Well, I have asked the vice chairman and he thinks he can have a report before the Commission within the month ready for our action or for our consideration.

Mr. BROWN. It might be helpful to provide this subcommittee with your timetable. If I may continue I will read a few more sections and hopefully, the Vice Chairman's report will address these sections.

Mr. MOSS. Before you do, it would be helpful also if we are going to be talking of amounts in excess or under to have some idea of the percent of carriers, the mix of carriers, so that these figures are given more meaning. At the moment, they lack this meaningful information.

Mr. STAFFORD. I think you are right, Mr. Chairman, because I think you will find that that will comport with the comment I made a while ago that the percentages of carriers of this size that we regulate perhaps would not fall within these percentages. I don't know. We would have to check.

Mr. MOSS. I don't know either; but I think it is highly important that we get that information for the record.

Mr. STAFFORD. Yes.

Mr. MOSS. Again, the record will be held to receive it.

[The following information was received for the record:]

PERCENTAGES OF REGULATED CARRIERS HAVING ANNUAL GROSS REVENUES ABOVE AND BELOW $250,000

Information furnished by the Bureau of Accounts indicates that regulated carriers are not classified according to revenues above and below $250,000 annually. However, a complete breakdown of all carriers by class follows:

BUREAU OF ACCOUNTS—SECTION OF REPORTS

	Dec. 31, 1974 [1]	Jan. 1, 1975
Carriers subject to uniform systems of accounts and required to file annual and periodic reports:		
Railroads, class I line, haul $5,000,000 or more	74	74
Railroads, class II line, haul under $5,000,000	248	260
Railroad switching and terminal companies, class I $5,000,000 or more	30	29
Railroad switching and terminal companies, class II under $5,000,000	149	134
Railroad lessor companies, no class	131	[2] 132
Motor carriers, class I passenger, $1,000,000 or more	118	[3] 128
Motor carriers, class I property, $3,000,000 or more	1,015	885
Motor carriers, class II property, $500,000 to $3,000,000	2,989	2,670
Pipeline companies, no class	105	104
Water carriers classes A and B:		
A—Exceeding $500,000	54	53
B—$100,000 to $500,000	24	25
Maritime carriers, no class	14	9
Electric railways class I, exceeding $1,000,000 [4]	8	8
Freight forwarders, class A $100,000 or more	124	134
Protective service companies, no class	6	6
Express companies, no class	1	1
Stockyard companies, no class	26	[5] 26
Holding companies (rail) no class	6	7
Holding companies (water) no class	1	1
Total	5,123	4,686

See footnotes at end of table.

BUREAU OF ACCOUNTS—SECTION OF REPORTS—Continued

	Dec. 31, 1974 [1]	Jan. 1, 1975
Carriers and organizations filing annual reports but not subject to prescribed uniform system of accounts:		
Car lines (companies furnishing cars for use on railroads) no class	128	135
Classes II and III motor carriers of passengers [6]	898	871
Class III motor carriers of property less than $500,000	11,931	12,450
Class C water carriers (less than $100,000 gross revenue)	104	105
Class B freight forwarders (less than $100,000 gross revenue)	30	23
Holding companies (motor) no class	86	90
Rate bureaus and organizations, no class	99	105
Total	13,276	13,779
Grand total	18,399	18,465

[1] Revised per computer mailing list counts.
[2] Includes 117 lessors to class I railroads and 15 lessors to class II railroads.
[3] Includes 6 combination (property and passenger) carriers.
[4] Class II, $250,000 to $1,000,000; class III, $250,000 or less.
[5] Includes 11 stockyard company lessors.
[6] Class II, $200,000 to $1,000,000; class III, $200,000 or less.

Mr. BROWN. I am going to read a few more sections of the Smith study and your comments, if you would like to make them, would be appreciated.

The next is on page 52 which states, "Many investigations were processed without any financial data."

Mr. STAFFORD. Of which now?

Mr. BROWN. This is the Smith study.

Chairman Stafford, would you comment on the statement that, "Many investigations were processed without any financial data," on page 52? Do you think this is untrue?

Mr. STAFFORD. I just have no basis on relying to that at all.

Mr. Rebein, Managing Director.

Mr. REBEIN. This states once again strictly from a factual analysis that some of the cases processed did not contain financial data so they were deficient in that respect.

It is not a wholesale indictment. Many of the cases did.

I might point out two things, sir, to keep this in the right perspective. This is an analysis of 1972 cases and we are kind of 4 years removed from that so it is a little bit historic but it was very reflective when presented to the chairman.

Now, second is the fact that statistics can lie because it does not go back to those reasons upon which a case was or was not prosecuted at a particular time. Those were subjective judgments and it is pretty hard to use a statistical analysis to analyze that properly.

Mr. BROWN. Just in further definition of this statement, what is the importance of having this financial data during the time when a firm is being investigated?

Mr. REBEIN. Well, financial data, in my understanding of it—and, once again, I am in the management side, I am not in the prosecuting side, so perhaps we need some other input—but it would be of interest to me to know when making a decision what revenues were derived from any violation of the law.

Mr. BROWN. Would you like to react to that, Chairman Stafford; what do you feel the importance of having this financial data is?

Mr. CERRA. The problem is the identification of the cases they are talking about. When we prosecute people for violating the Interstate

Commerce Act by operating without a license we have no financial data on how much they have been illegally operating, and if that is what it means, you are talking about one thing.

Mr. STAFFORD. Mr. Chairman, may I just make one or two further observations?

It may appear that we are trying to defend what happened here. We are not. We are really trying to arrive at an answer on this study. I would like to ask Mr. Gould if he would comment. He is the Director of our Bureau of Enforcement. I would like for him to respond.

Mr. GOULD. As far as the financial information pointings, we do have to have an idea of the size and resources of the defendant in order to arrive at an appropriate penalty or sanction of one type or another.

For example, in civil forfeiture suits, if it becomes necessary to bring a case against that particular carrier in court, the Department of Justice invariably insists upon a direct and up to date financial statement in order to determine what they think they should seek in the way of some kind of sanction.

If I may go back to one of your previous questions, Mr. Brown, with respect to the contention in one of those reports that there is a disparity in the number of cases brought against small carriers versus those against large carriers, I did make an analysis of the figures for the 1975 fiscal year because I was curious about it myself.

I noted that of our total inventory of carriers, there are approximately 15,415 carriers that fall in the class 2 and class 3 category. Now there are 989 who fall in the class 1 category. Now, obviously, therefore, there will be a great number of cases brought against the smaller group of carriers as compared to those against the class 1 carrier.

In the class 2 and class 3 category, I found that there were almost exactly 5 percent of those carriers against whom we had taken final enforcement action. Against the class 1 carriers in the 1975 fiscal year, we took 8.5 percent of those carriers into a final enforcement step.

I don't think there is an unfair disparity between the categories of carriers as far as I can determine.

Mr. STAFFORD. Again, the Commission has made no determination on any of these. This is the gentleman who runs his department, he is entitled to make a defense on it. The Commission itself has not made a decision and will not until the vice chairman comes in with his report from all sources.

Mr. BROWN. Mr. Chairman, may we place Mr. Gould's analysis in the record?

Mr. MOSS. It has already been requested and this is in response to the request and it will be supplied for the record.

[The following information was received for the record:]

FISCAL YEAR 1975 PERCENTAGE BREAKDOWN OF ENFORCEMENT ACTIONS AGAINST CLASS I, II, AND III MOTOR CARRIERS

An analysis of the Commission's records discloses that as of the end of 1975 there were a total of 15,415 property or passenger carriers within the Class II and Class III categories established by the Commission and 989 Class I carriers of property or passengers.

An analysis of the Commission's records with respect to all types of enforcement actions instituted or concluded during Fiscal Year 1975 shows that 84

such actions involved Class I carriers and 770 involved Class II and Class III carriers. Thus, the percentage of Class II or Class III carriers that were the subjects of final enforcement actions instituted or concluded in Fiscal Year 1975 amounted to slightly less than 5% whereas the total of Class I carriers that were subjected to such actions represented 8.49+% of all Class I motor carriers.

Mr. BROWN. While Mr. Gould is at the table, Chairman Stafford, I just would like to read one other section from this report.

Mr. Moss. Mr. Gould, have you been sworn?

Mr. GOULD. No.

Mr. Moss. I think any member of the staff who may be called to testify might as well stand now and be sworn.

Mr. STAFFORD. May I ask all my staff to stand now, all of them.

Mr. Moss. Do you solemnly swear that the testimony you are about to give this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

[All responded "I do."]

Mr. Moss. Now the reporter, while you are all on your feet, will get your names.

Mr. GOULD. Bernard A. Gould, Director of the Bureau of Enforcement.

Mr. KNAPPEN. Theodore C. Knappen, Legislative Counsel.

Mr. BYRNE. Thomas Byrne, Assistant to the Director, Bureau of Operations.

Mr. FITZWATER. Alan M. Fitzwater, Director of Rail Services Planning Office.

Mr. KATZMAN. Owen Katzman, Chairman Stafford's personal staff.

Mr. KRATZKE. John Kratzke of the Managing Director's Office.

Mr. BURNS. Joel E. Burns, Assistant Managing Director.

Mr. HAIFETZ. Alan Haifetz, chairman's personal staff.

Mr. TEEPLE. Lewis R. Teeple, Assistant Director of the Bureau of Operations.

Mr. OSWALD. Robert L. Oswald, Secretary.

Mr. STEWART. Michael Stewart, Legislative Counsel.

Mr. BROWN. Chairman Stafford, I draw your attention again to the Smith panel report page 45. I think it would be helpful, since Mr. Gould is now at the table, to also obtain his reaction to this passage.

In relation to civil forfeitures, the report states:

Most of the forfeitures and fines were substantially less than the illegal revenues received by violators and substantially below the $500 per count statutory penalty authorized for most violations.

Would you like to react to this?

Mr. GOULD. I think the comparison is relatively meaningless, frankly. It talks about illegal revenues and revenues really mean nothing as far as the defendant carrier is concerned. What is significant to him is the amount of profit that he derives from those revenues and the figure from a profit standpoint is nowhere indicated in this.

My own feeling about the penalties which are imposed are that they do recapture the bulk of the profits earned from those revenues and something above that.

Mr. BROWN. Chairman Stafford, do you have any reaction to this?

Mr. STAFFORD. No, sir. I will let his statement stand and the Commission will be looking into statements made by bureau directors who

are in charge of the various programs that we have under consideration now.

The Vice Chairman will be making a report on his findings based on what they say and based on what this report and the blue ribbon report say and that should be, within the month, Mr. Chairman. I will be happy to give you a continuing report as he makes progress on his findings.

Mr. Moss. We would appreciate that.

Mr. CERRA. Over 40,864 complaints were handled with a technical staff of 289 people.

Mr. Moss. Thank you.

Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

I thought the Chairman talked about going into some fields which seemed to me were astray from our own field of coverage, whether we should be discussing personnel matters or truck matters. The Chairman has dispensation from public works and, therefore, we have a broader coverage, but I don't know about civil service. I did want to get into that field first because he has raised some issues on that.

How many employees do you have, Mr. Chairman?

Mr. STAFFORD. In the neighborhood of 2,000.

Mr. COLLINS. How many of them are in Washington?

Mr. STAFFORD. 1,537.

Mr. COLLINS. Is there any reason they all have to be in Washington?

Mr. STAFFORD. Well, under our administrative mix it takes about that many to take care of the cases once they have been before us. Most of these cases come directly to us and not through our field force.

Mr. COLLINS. One good point that our counsel raised, and I am inclined to agree with him, is this point about to what extent the regional office is able to make legal decisions and too much of it comes to the top. Is there any reason why it all has to come to the top?

Mr. STAFFORD. We had that under consideration from time to time. About the only area that we have talked about that then is the area of temporary authorities. We have talked from time to time about whether or not we should permit the field staff to make the determination itself rather than bring those before us and make a determination on the facts we have.

Part of our reason for insisting on those coming in is that since Congress, in its wisdom, took all of our safety functions and all Commission safety personnel, and gave it to the Department of Transportation, it became incumbent upon us in the main office to get the Department of Transportation involved in all the safety reports. We need a safety report on every temporary authority in here so I can see why it is a problem to start turning over all of that to the field office to handle.

Mr. COLLINS. Sometimes it is said that people in these Washington offices keep bringing all this paperwork up here to justify their own job and I certainly hope that isn't true.

Mr. STAFFORD. Has that something to do with the Peter Principle?

Mr. COLLINS. I would like to ask you this. How many reports does

the ICC receive, total number of reports? How many of those are necessary?

Mr. STAFFORD. It is tremendous. I don't even know how we can put that together, but I will try to get an answer for you.

Mr. COLLINS. I would like to ask unanimous consent, if I could, Mr. Chairman, that we leave this open because I would like to have a complete list, if I could.

Mr. MOSS. Without objection, the material will be entered in the record at this point as soon as it is received.

Mr. COLLINS. It will be a complete report as to number of reports you have and their frequency. Also I would like to have an analysis as to whether any of them could be substituted for a State or a county or municipality, whether everyone of them is essential on its own merit. I would like to also know how many pages of answers you receive.

In other words, it is easy just to ask for a simple report.

Mr. STAFFORD. I recall that the infamous Rock Island case was 150,000 pages.

Mr. COLLINS. That is a good one for the record.

Mr. CERRA. The reports that the Interstate Commerce Commission requires carriers to submit?

Mr. COLLINS. That is right.

Mr. CERRA. As compared to reports from our investigators concerning reports?

Mr. COLLINS. Not your staff, that is internal. The ones that you require that must be prepared. Actually, I think a survey of that type would be good because you might find that some of them could be eliminated.

Mr. STAFFORD. We regulate some 23,000 transportation companies.

Mr. COLLINS. Not necessarily 23,000 people. I would like to know that, but how many times do you require the 23,000 to report to you? We would like to get both of those in.

[The following information was received for the record:]

GAO/OMB NUMBER	FORM TITLE	NUMBER CARRIERS	NUMBER TIMES FILED ANNUALLY	MAN HOURS PER RESPONSE	NUMBER PAGES
60-RO 121	Quarterly Condensed Balance Sheet - Railroads (Class I Line - Haul Railroads)	74	4	7	2
60-RO 120	Quarterly Report of Revenues, Expenses and Income - Railroads (Class 1 Line - Haul Railroads)	74	4	6	3
60-RO 113	Quarterly Report of Freight Commodity Statistics - Railroads (Class 1 Line - Haul Railroad)	74	5	217	14
(RO 144)	Quarterly Report of Freight Loss and Damage Claims - Railroads (Class 1 Line - Haul Railroads)	74	4	64	4
(RO 317)	Expenditures for Additions and Betterments - Railroads (Class 1 Line Haul - Railroads)	74	4 1/	2	3
(RO 105)	Ex Parte No. 305 - Quarterly Report Forms (Class I Line - Haul Railroads)	71	4	520	10
60-RO 122	Quarterly Report of Train and Yard Service - Railroads (Class 1 Line - Haul & Switching and Terminal)	103	4	68	2
60-RO 125	Quarterly Report of Operating Statistics Revenue Traffic Railroads (Class I Line - Haul Railroads)	74	4	69	2
(RO 232)	Quarterly Report of Motive Power and Car Equipment Railroads (Class I Line-Haul and Switching and Terminal)	74 Line-Haul 29 Switching & Terminal	4	46 Line-Haul 14 S&T	1
60-RO 363	Revenue Piggback and Container Traffic -(Class 1 Railroads - Line-Haul Railroads)	74	4 2/	114	4
	MONTHLY				
	Monthly Report of Employees, Service and Compensation Wage A and B (Class 1 Line-Haul and Switching and Terminal)	68 Line-Haul 29 Switching & Terminal	13	121 Line-Haul 26 S&T	5
(RO 278)	Preliminary Report of Number of Employees of Class 1 Railways (Line-Haul and Switching and Terminal)	68 Line-Haul 29 Switching & Terminal	12	14 Line -Haul 8 S&T	1

1/ All carriers are circulated ; response is voluntary.

2/ All carriers file first quarter; participating carriers file quarterly thereafter.

MANDATORY CARRIER REPORTING REQUIRED BY THE INTERSTATE COMMERCE COMMISSION

RAILROADS
ANNUAL

GAO/OMB NUMBER	FORM TITLE	NUMBER CARRIERS	NUMBER TIMES FILED ANNUALLY	MAN HOURS PER RESPONSE	NUMBER PAGES
60-R 0098	Annual Report of Class I - Line-Haul & Switching and Terminal Companies & Railroad Holding Companies	110	1	1269	149
60-R 0099	Annual Report of Class II Line-Haul and Switching and Terminal, Railroads and Stockyard Companies	410	1	173	54
(RO 255)	Annual Report of Railroad Lessors	146	1	233	84
60-RO 102	Annual Report of Electric Railways	8	1	176	59
60-RO 346	Revenue from Operation of Coal and Ore Wharves and Volume of Traffic (ACC-71)(Class I Line-Haul Railroads having Coal and Ore Wharves)	15	1	2	1
60-RO 395	Report of Incentive Per Diem Items (All Railroads)	500	1	8	2
60-RO 388	Railroad Equipment Service Life Study (20 % sample of Class I Line-Haul Railroads)	14	1	120	1
(RO 247)	Statement of Property Changes - Railroads (Class I & II Switching and Terminal Railroads)	100	150 reports	16 per report	1
(RO 201)	Appendix A - Car Statistics FCS-1, General Service cars	162	2	4	1

MOTOR CARRIERS
ANNUAL

(RO 252)	Annual Report of Class I Motor Carriers of Property	900	1	118	96
(RO 251)	Annual Report of Class II Motor Carriers of Property	2600	1	88	91
60-RO 266	Annual Report of Class III Motor Carriers of Property	11,230	1	2	8
(RO 292)	Annual Report of Class I Motor Carriers of Passengers	111	1	132	59
60-RO 267	Annual Report of Classes II & III Motor Carriers of Passengers	870	1	2 1/2	6
(RO 250)	Annual Report - Motor Carriers Holding Companies	69	1	45	6
(RO 259)	Annual Report of Motor Carrier Freight Commodity Statistics(Class I Motor Carrier of Property)	576	1	470	14

GAO/OMB NUMBER	FORM TITLE	NUMBER CARRIERS	NUMBER TIMES FILED ANNUALLY	MAN HOURS PER RESPONSE	NUMBER PAGES
(RO 116)	Ex Parte MC-19 Performance Report - Household Goods Carriers	2658	1	6	1
(RO 260)	Form 2 of Highway Form A	250	1	12	3
(RO 261)	Listing of Multiple Truck Load Shipments Class I and II Motor Common Carriers of General Freight - Intercity	50	1	3	1
(RO 262)	Form 4 of Highway Form A Pick-up and Delivery Trip Manifest (Class I & II Motor Common Carriers of General Freight)	250	40 3/ reports	3	2
(RO 263)	Form 7 of Highway Form A. Intercity Trip Report (Class I and II Motor Common Carriers of General Freight)	250	40 3/ reports	2	1
(RO 264)	Form 10 of Highway Form A Handling All Intercity Traffic (Class I & II Motor Common Carriers of General Freight)	250	20 3/ reports	2	1
(RO 265)	Form 11 - Analysis of Peddle Trip Operations (Class I & II Motor Common Carriers of General Freight)	250	2 reports	2	1
(RO 156)	Field Report of Highway Form A (Class I & II Motor Carrier of General Commodity)	250	1	2	3

3/ Forms 4, 7 and 10 are filed periodically throughout year based on sampling of trips and terminals.

	MOTOR CARRIERS QUARTERLY				
(R 028)	Quarterly Report of Results of Operations (Class I & II Motor Carrier of Property) (Not all pages filed by every Carrier)	3500	4	4 1/2	11
RO 311)	Quarterly Report of Freight Loss & Damage Claims - Motor (Motor Carrier of Property with average Operating revenues of $1 million or more)	1,900	4 36	36	10
(RO 293)	Quarterly Report of Revenues, Expenses & Statistics of Class I Motor Carrier of Passengers	111	4	6	2
60-RO377	Quarterly Report of Under Estimates and overestimates (Motor Carrier of House Hold Goods)	2658	4	2	1
60 RO 361	Piggyback Traffic of Class I Motor Carriers of Property	900	4 2/	5	4

GAO/OMB NUMBER	FORM TITLE	NUMBER CARRIERS	NUMBER TIMES FILED ANNUALLY	MEAN HOURS PER RESPONSE	NUMBER PAGES
(RO 319)	Expenditures for Additions and Betterments Class I Motor Carrier of Passengers - Class I and II Motor Carrier Property	3,611	4 1/	2	4
	PIPELINE ANNUAL				
(RO 249)	Annual Report of Pipeline Companies	101	1	188	62
(RO 243)	Statement of Property Changes other than Land and Rights-of-Way Pipeline Carriers	101	1	125	50
(RO 244)	Summary of Land and Rights-of-Way Property Changes - Pipeline Carriers	101	1	12 1/2	15
(RO 245)	Summary of Changes In Original Cost and Total Original Cost at End of Period in Pipeline Carriers	101	1	7 1/2	3
(RO 246)	Summary of Cost of Reproduction New and Reproduction New Less Depreciation - Pipelines	101	1	37 1/2	15
	QUARTERLY				
60-RO 108	Quarterly Report of Pipe Line Companies (Operating Revenues above $500,000)	89	4	1	11
(RO 320)	Expenditures for Additions and Betterments - Oil Pipeline Companies ACR-41	101	4 2/	2	4
	WATER CARRIERS ANNUAL				
(RO 258)	Annual Report of Inland and Coastal Waterways (Class A and B Water Carriers)	78	1	297	75
60-RO 107	Annual Report of Carriers by Water (Class C)	109	1	4	5
41-R 1414.11	Annual Report of Maritime Carriers	9	1	45	115
	QUARTERLY				
60-RO 119	Quarterly Report of Revenue Traffic of Carriers by Water Class A and B and Maritime Carriers	96	4	13	
(RO 318)	Expenditures for Additions and Betterments - Class A Water Carriers Class A and Maritime	75	4 1/	2	4
	Piggyback Traffic Terminated by Water Carriers Class A Water Carrier and Maritime		4 2		

FREIGHT FORWARDERS
ANNUAL

GAO/OMB NUMBER	FORM TITLE	NUMBER CARRIERS	NUMBER TIMES FILED ANNUALLY	MAN HOURS PER RESPONSE	NUMBER PAGES
(RO 254)	Annual Report of Class A Freight Forwarders	124	1	17	18
(RO 253)	Annual Report of Class B Freight Forwarders	29	1	6	4
	QUARTERLY				
60-R0199	Quarterly Report of Revenues, Expenses and Statistics of Class A Freight Forwarders	124	4	5	3
60-RO 362	Piggyback Traffic Originated by Class A Freight Forwarders	124	4 2/	15	2
	OTHER REPORT FORMS				
	Annual Report of Private Car Lines	6	1	36	28
(RO 256)	Annual Report of Persons Furnishing Cars or Protective Services to Railroad or Express Companies	137	1	2	5
(RO257)	Annual Report of Rate Bureaus and Organizations	101	1	8	5
(RO 339)	Schedule 1000, Competitive Bidding - Clayton Anti-trust Act (65 Class I Railroads Line-Haul, 8 Inland and Coastal Waterways & Pipelines)	77	1	1	5
60-RO 402	Additions and Betterments - Supplemental Data - (all Modes)	3864	1	34	1
	Carrier Classification Form (All Modes)	354	1	1/2	1

1/ All carriers are circulated; response is voluntary.

2/ All carriers file first quarter; participating carriers file quarterly thereafter.

Mr. COLLINS. The subject of personnel comes up. We recently had a situation in the Civil Service Committee, of which I am a member, where they made a survey in Philadelphia regarding the mint and this was made by an outside group not in the Government business. They brought out the fact that the civil service rank and file employee was getting 25 percent more pay than those in comparable jobs in private industry and that middle management was getting 100 percent more than a comparable job in private industry. Is that true in your Commission?

Mr. STAFFORD. Well, obviously I don't know what the outside is making, but if they are that bad off, they are in bad shape.

If the Government employee is being paid, as you say that study shows, I think it was a completely biased study, but I do that without actually knowing. The Labor Department puts out these reports and I am sure they must be correct. They have to stick to the facts and their reports show the other way.

Mr. Moss. Would the gentleman yield?

Mr. COLLINS. Yes.

Mr. Moss. I think there is one great difference between the Post Office and the Commission.

Mr. STAFFORD. I was not saying the Post Office.

Mr. COLLINS. No; this was the Treasury Department.

Mr. Moss. The Treasury Department? It is inconceivable to me that the standards of comparability which have been enacted into law should be so grossly ignored if that is the result.

Mr. COLLINS. They are making a survey of that. They are making a survey because in this case they were engaged in private industry work. They were in the manufacturing process and there was comparability.

Now, one thing they objected to, they said these employees got more days off than private industry. Is that true of your employees?

Mr. STAFFORD. No; ours is strictly by law.

Mr. COLLINS. I know, but civil service laws are more liberal than private industry laws.

Mr. STAFFORD. As President Johnson said to me one day, he and I both worked for the Government all of our lives so I could not tell you.

Mr. COLLINS. They raised the question about merit raises and I would assume that every evaluation you make is on a merit basis within your own operation. Do you make your own promotions there within your own personnel department?

Mr. STAFFORD. I don't personally handle that. That is through our regular management procedures.

Mr. COLLINS. Who is your personnel manager?

Mr. STAFFORD. Mr. Curtis F. Adams is our personnel director. He is not here with us.

Mr. COLLINS. How many objections have you had from employees that the positions were not raised on a merit basis?

Mr STAFFORD. I am not sure that I have had any complaints from employees. Generally, I hear the complaints, it seems to me, but——

Mr. REBEIN. Mr. Collins, under the liberal appeal processes which we had under the civil service regulations, if they don't agree with you, they will appeal and it is quite a lengthy process.

Mr. COLLINS. What is your position?

Mr. REBEIN. Managing director.

Mr. COLLINS. So you would hear about them?

Mr. REBEIN. Yes.

Mr. COLLINS. How many do you have that have come to your attention in the past 6 months?

Mr. REBEIN. In the past 6 months, three.

Mr. COLLINS. Three.

Mr. REBEIN. That are working now.

Mr. COLLINS. Out of 1,800?

Mr. REBEIN. Yes.

Mr. COLLINS. My time is up. I want to go into railroads next time.

Thank you, Mr. Chairman.

Mr. Moss. Mr. Ottinger.

Mr. OTTINGER. Thank you, Mr. Chairman.

Can you describe for us what weight you have given in your deliberations to preserving competition or fostering competition or preventing restrictions on competition in determining the licenses that you give, particularly in the trucking field?

Mr STAFFORD. Basically, unless it happens to be a very large case that is contested, I don't get into them at all. Those are basically handled by Division 1, headed by Commissioner Murphy, but that is only one of a number of considerations that are taken into account. Whether or not there is a sufficient number of other carriers in the field with the same authority——

Mr. OTTINGER. Do you consider it an important consideration?

Mr. STAFFORD. I think it is one important consideration, yes.

Mr. OTTINGER. Then how do you justify the rule that apparently is applied that requires trucks to return to their point of origin empty?

Mr. STAFFORD. We don't. We have no requirement.

Mr. OTTINGER. But is this a general practice of your licensing?

Mr. STAFFORD. No, sir.

Mr. OTTINGER. Well, that certainly is not what you read in the papers.

Mr. STAFFORD. I know. You read a lot of hogwash. This is just is not true.

Mr. OTTINGER. You have no requirements in your licenses?

Mr. STAFFORD. We have no requirement that tells them they have to return empty.

Mr. OTTINGER. And is there a condition in a number of licenses which you grant which prohibits that trucker from picking up goods at their point, at or near their point, of destination and returning with a full load?

Mr. CERRA. Mr. Ottinger, the Commission has had for the last year and a half a feasibility requirement that any application that is filed must show that they will go out loaded and come back loaded or any justification why that should not be so. There is a certain amount of empty back haul but that is created by the demands of the areas.

Mr. STAFFORD. Mr. Congressman, there is no way you are ever going to get rid of some empty mileage in those trucks and right now——

Mr. OTTINGER. I am not talking about the question of circumstance. I am talking about the question of ICC policy and regulations which require this inefficiency.

Mr. STAFFORD. What you are really talking about is breaking down the regulatory process of the regular route carriers that come under

our jurisdiction. What you are really talking about are the owner-operators who don't have authority from the Commission. You are talking about carriers who maybe carry fruit and vegetables from the west coast to the east coast and they are not under our jurisdiction.

Of course, what they would like to do is take some regulated carrier's front haul to unbalance his system, somebody that we require to give a service to consumers, to shippers. These people—I think this is what you are really hearing—really have no basis for expecting the Government to move in and break up service, a freight system in fact, that serves this country well and that is basically what they want us to do.

Now, many of those carriers have men on the east coast, we will say. They call and find out where they can pick up loads that are not regulated loads. Many of those carriers do not go back empty. The problem is they can't wait sometimes to pick up that load because it does not pay them to stay on the east coast and wait for it until it is ready to go, they need to go back to the west coast to bring about another load.

Mr. CERRA. Mr. Ottinger, there are two significant points the committee should have at its disposal. One is the fact that we made a very preliminary study when the 16 percent empty return ratio was thrown at us through the press and we found out it is more like seven. Then we hired an outside concern, the Mitre Corp., to review just what this empty return was insofar as regulated carriers are concerned, and their preliminary findings were that the empty return would not be associated with regulated carriers.

The study is going on by the ICC. It is a year long study which we are having in conjunction with various State commissions.

Mr. STAFFORD. Let Commissioner O'Neal speak on that.

Mr. O'NEAL. We do have a nationwide year long study of backhaul or empty mileage, whatever you want to call it, the idea being to determine on a statistically accurate basis just how many vehicles are traveling throughout the country without a full load or partially loaded.

We are doing this for all vehicles so that we will know, or at least have a much better idea, of what regulated carriers are empty or partially loaded and which nonregulated carriers are in that category. That has not been done before. We have a feeling based on information, as the chairman or general counsel indicated, that many regulated carriers are not, or are, full most of the time or at least partially loaded most of the time, but we are not in a position yet to know.

Mr. OTTINGER. Can you furnish to the committee the information on any licenses you grant that contain any restrictions in this respect and any information that you have about complaints that you have received on this question?

Mr. CERRA. What time period, sir?

Mr. OTTINGER. I don't know. What is readily feasible for you?

Mr. CERRA. A year.

Mr. STAFFORD. Be sure we understand what he is talking about.

We think maybe part of that was in one of those 96 questions that you presented to us, but we will look into that.

Mr. Moss. I think we have the information.

Mr. STAFFORD. We will be responsive if we can.

Mr. Moss. I don't believe we have a copy of that report.

Mr. OTTINGER. Do we have a copy of the Mitre report?

Mr. STAFFORD. We will send it to the chairman.[1]

Mr. OTTINGER. We had a specific example of a similar problem in my own community and I don't know whether this is typical or not. I suppose it is something that is difficult to find in your records.

There are two spaghetti sauce factories in Briarcliff, N.Y., and the R. & D. Trucking Co. of Pleasantville, N.Y., which happens to be the community where I live, applied for a temporary interstate license to operate in Pennsylvania and New Jersey.

What they wanted to do was to pick up glass jars for the spaghetti sauce in Port Allegany, Pa., and tomatoes and other food substances that go into the spaghetti sauce in Fairlawn, N.J., and various other New Jersey communities. They were granted, by the ICC, the temporary permit only to go to Port Allegany, Pa., and pick up the glass jars. They were not permitted, even though they had to drive right through the northern New Jersey communities, to pick up the tomato stuffs in northern New Jersey.

The sauce companies feel that R. &. D. offers a better service at less cost than its established competitors.

Mr. CERRA. Are you talking about the raw commodities? They don't need any ICC authority. That is why we don't need Pennsylvania authority for jars. They can stop there anytime they want.

Mr. OTTINGER. It may not be raw tomatoes, it may be processed commodities.

Mr. STAFFORD. May we get the facts of the matter as best we can.

Mr. OTTINGER. If that kind of decision is being rendered on a systematic basis, it clearly is stifling competition.

Mr. STAFFORD. Of course it could be and I know nothing about the case other than what you have told me, but what you are talking about there is perhaps something other carriers front haul with those jars. I don't know.

Mr. CERRA. We have a very restricted basis upon which we can grant temporary authority. It must be proven an immediate, urgent need and no other carrier service available and we have to administer the act that way.

Mr. OTTINGER. Is that a statutory requirement?

Mr. CERRA. Yes, section 210 of the Interstate Commerce Act.

Mr. OTTINGER. My time has expired. If I don't get a chance to question again, if you would submit for the record the information on the rationale which you are giving.

Mr. STAFFORD. Does that indicate an appeal under consideration?

Mr. OTTINGER. I don't know. R. & D. has applied for a permanent license. It is virtually out of the question, they were told, in the absence of temporary authority.

Mr. STAFFORD. You find it is more difficult sometimes to get temporary authority than it is to get permanent.

Mr. OTTINGER. I am not nearly so concerned about the specifics of the case as I am about whether the process through which the Commission is making its decisions is consistently anticompetition.

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[1] A copy of the Mitre Corp. report, "A Preliminary Assessment of Empty Miles Traveled by Selected Regulated Motor Carriers," has been supplied to the subcommittee.

Mr. STAFFORD. It sounds like it is the act itself that has created problems.

Mr. OTTINGER. I would also like you to submit for the record and for me in my office the rationale by which you grant higher rates for recycled material than you do for raw materials.

I understand that my time has expired.

Mr. STAFFORD. You say you want that prepared for the record rather than——

Mr. OTTINGER. My time has expired.

Mr. Moss. Do you want it for the record?

Mr. OTTINGER. Unless the Chairman wants to indulge me in further time.

Mr. Moss. You have to ask for unanimous consent for additional time, the Chair can't do it on your behalf.

Mr. STAFFORD. We will prepare the material and send it to the committee.

[Testimony resumes on p. 310.]

[The following information was received for the record:]

Commission's Rationale for Allowing a Carrier to Charge a Higher Rate for the Carriage of Recyclable Materials Than for the Carriage of Raw Materials

WHAT IS THE INTERSTATE COMMERCE COMMISSION'S RATIONALE FOR ALLOWING A CARRIER TO CHARGE A HIGHER RATE FOR THE CARRIAGE OF RECYCLABLE MATERIALS THAN FOR THE CARRIAGE OF RAW MATERIALS? The answer to this question is that it ordinarily costs the railroads more to transport a ton of recyclables than it does to transport a ton of virgin materials.

Commission analysis of allegations of discrimination in freight rates between recyclable and virgin materials has always focused on two interrelated topics: first, the competitive relationship between the commodities and second, the cost of service. As noted in the Order served February 25, 1976 in Ex Parte No. 319, Investigation of Freight Rates for the Transportation of Recyclable or Recycled Materials, ICC interest in freight rates on recycled materials has been of long standing and has been the subject of numerous Commission proceedings.

While the Commission's analysis of the competitive relationships between the commodities has been extensive, this memorandum will focus on cost of service factors relating to rates on recycled scrap iron as an example of the factors considered.

First, because iron ores are produced and consumed in higher volumes than scrap, there is a regularity of movements that leads to significant cost savings. Trains may be placed in dedicated service for iron ore or trains may be scheduled well in advance of shipment. Because scrap is normally shipped

in single car lots as opposed to multiple cars or unit trains for ores, dedicated service is not possible and because scrap is normally sold on a daily basis through brokers as opposed to large annual ore contracts, railroads may not plan for the needs of scrap shippers as easily as they can for iron ore shippers.

Second, as noted above, scrap normally moves in single car lots and iron ore normally moves in unit train or multiple car lots. The higher volume leads to savings that are reflected in the rates.

Third, iron ore normally loads heavier in the cars than does the more bulky scrap iron. The ability to load more tons of ore in a car is reflected in lower rates.

Fourth, because of the physical makeup of scrap, it does significantly more damage to cars than does iron ore. This damage causes higher rates.

Fifth, iron ore cars are utilized more during a year than are scrap cars. This higher utilization level is reflected in lower rates.

Discrimination in general rate increase structures is a matter of continuing concern to the Commission. Both before and after passage of the National Environmental Policy Act of 1969, the Commission has been vitally concerned with the issue of discriminatory rates on recyclable materials. Therefore, the ICC instituted proceedings designed to bring into focus possible abuses and to design methods of ending any discrimination. Examples of such

proceedings are Ex Parte No. 270 (Sub-No. 6), Investigation of Railroad Freight Rate Structure, Scrap Iron and Steel, Ex Parte No. 295 (Sub-No. 1), Increased Freight Rates and Charges, 1973 - Recyclable Materials, and Ex Parte No. 305-RE, Increased Freight Rates and Charges, 1975 - Recyclable Materials.

Ex Parte No. 270 (Sub-No. 6) involves an in-depth investigation of the rate structures concerning iron ores and scrap iron and steel. The investigation should clearly delineate the rate structure relationship between these recyclable and virgin commodities. Additionally, the Railroad Revitalization and Regulatory Reform Act of 1976, in section 204, mandates that the ICC undertake an investigation into possible existing disparate rates as applied to recyclable materials and competing raw materials. A copy of the order instituting the proceeding mandated by section 204 is attached. The study in Ex Parte No. 270 (Sub-No. 6) was made on the basis of rates in effect on September 1, 1973. The Ex Parte No. 319 study will concern rates in effect on September 1, 1975. Therefore, these proceedings together should form an accurate picture of whether undue discriminations exist.

FR

SERVICE DATE
FEB 25 1976

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D. C., on the 20th day of February, 1976.

EX PARTE NO. 319

INVESTIGATION OF FREIGHT RATES FOR THE TRANSPORTATION OF RECYCLABLE OR RECYCLED MATERIALS

Through the years the Interstate Commerce Commission has had a strong and continuing interest in the discovery and subsequent elimination of all forms of freight rate discrimination. Prior to and after the enactment of the Environmental Policy Act of 1969, the Commission, upon its own motion, upon the motion of others, and in response to various legislative enactments, has devoted significant time and effort to issues concerning the rate structures on recyclable materials. The Commission's recognition of the need to draw recyclable materials into the main stream of the economy is manifested in such proceedings as Ex Parte No. 270 (Sub-Nos. 5 and 6), Investigation of Railroad Freight Rate Structure, Iron Ores & Scrap Iron and Steel, Ex Parte No. 295 (Sub-No. 1), Increased Freight Rates and Charges, 1973 - Recyclable Materials, Ex Parte No. 305-RE, Increased Freight Rates and Charges, 1975 - Recyclable Materials, and other general revenue proceedings. In furtherance of a just, reasonable and nondiscriminatory freight rate structure for recyclable materials, the Commission, in Ex Parte No. 306, Public Law 93-236 - Freight Rates for Recyclables, 346 I.C.C. 408, expeditiously responded to legislative direction by proposing and subsequently adopting appropriate rules to facilitate the elimination of discrimination against recyclable materials.

On February 5, 1975, Public Law 94-210, the Railroad Revitalization and Regulatory Reform Act of 1976 was enacted (90 Stat. 31). The intention of this Act is to provide "means to rehabilitate and maintain the physical facilities, improve the operations and structure, and restore the financial stability of the railway system of the United States, and to promote the revitalization of such railway system, so that this mode of transportation will remain viable in the private sector of the economy and will be able to provide energy-efficient, ecologically compatible transportation services with greater efficiency effectiveness, and economy..." Embodied in the Act are many changes in and additions to the Commission's responsibilities under Part I of the Interstate Commerce Act, the Regional Rail Reorganization Act of 1973, and other related statutes.

Section 204 of the Act provides, in part, that the Commission shall:

> (l) conduct an investigation of (A) the rate structure for the transportation, by common carriers by railroad subject to part I of the Interstate Commerce Act, of recyclable or recycled materials and competing virgin natural resource materials, and (B) the manner in which such rate structure has been affected by successive general rate increases approved by the Commission for such common carriers by railroad;

(2) determine, after a public hearing during which the burden of proof shall be upon such common carriers by railroad to show that such rate structure, as affected by rate increases applicable to the transportation of such competing materials, is just, reasonable, and nondiscriminatory, whether such rate structure is, in whole or in part, unjustly discriminatory or unreasonable;

(3) issue, in all cases in which such transportation rate structure is determined to be, in whole or in part, unjustly discriminatory or unreasonable, orders requiring the removal from such rate structure of such unreasonableness or unjust discrimination;

Although section 204 of the Act does not entail specific changes in existing law, it does, inter alia, charge the Commission with the responsibility for conducting an investigation into the rail rate structures for the transportation of recyclable materials and for ordering removal from such rate structure any rates found to discriminate against recyclable materials. The Commission is also ordered to investigate the manner in which rail rate structures have been affected by successive general rate increases.

To assist the Commission in complying with these directives and to assure proper assessment of the issues embodied therein, respondents and other parties should submit their evidence in accordance with the format set forth in Appendix A.

In addition to the above, respondents and other parties submitting evidence for consideration in this investigation are cautioned to take particular note of the following: Under section 204(a)(2) of the Railroad Revitalization and Regulatory Reform Act of 1976, the burden of proof is on the common carriers by railroad to show that the freight rate structure is just, reasonable, and nondiscriminatory. Hence, the carriers will be required to demonstrate the validity of any evidence submitted with respect to the representative or repetitive movements selected. The Commission will determine whether rates on recyclable materials are discriminatory primarily on the basis of comparisons of cost-revenue relationships and the competitive relationships of the involved materials. Although the major issues in this proceeding focus upon the cost and revenue relationships of the material movements under investigation, the Commission intends to fully consider evidence concerning the effects that freight rate structures have on the industries involved and on the environment.

A bibliography of studies concerned with the relationships between recyclable and virgin materials is attached hereto as Appendix B. Parties are strongly encouraged to submit additions to and comments on the bibliography as part of their statement of intent to participate due on or before March 9, 1976. Submission of copies of proposed additions to the bibliography should be made to the extent practicable.

It is ordered, That a proceeding be, and it is hereby, instituted with the objective of investigating the rate structure for the transportation, by common carriers by railroad subject to Part I of the Interstate Commerce Act, of recyclable or recycled materials and competing virgin natural resource materials, and the manner in which such rate structure has been affected by successive general rate increases approved by the Commission for such common carriers by railroad in order to determine whether such rate structure is just, reasonable, and nondiscriminatory in whole or in part.

It is further ordered, That all common carriers by railroad subject to Part I of the Interstate Commerce Act, be, and they are hereby, made respondents in this proceeding.

It is further ordered, That the following recyclable or recycled materials will be the subject of our investigation in this proceeding and that suggestions for additions to or deletions from this list as well as suggestions for a list of competitive or potentially competitive virgin natural resource materials should be made in statements of intent to participate due on or before March 9, 1976:

STCC NO.	COMMODITY
22 941	Textile Waste garneted or processed
22 973 15	Noils, ramie
22 973 25	Noils, (combings or comber waste), cotton
thru	
22 973 68	Rovings, jute and istle (ixtle)
32 299 24	Cullet (broken glass)
33 119	Blast furnace or coke oven products, Nec.
33 312	Copper matte, speiss or flue dust
33 332	Lead matte, speiss or flue dust
333 332	Zinc dross, residues, ashes
33 342	Aluminum residues
33 398	Miscellaneous Nonferrous Metal residues.
40 1	Ashes
40 2	Waste or Scrap

The STCC numbers referred to shall also embrace all articles assigned additional digits listed thereunder in STCC Tariff 1-D.

It is further ordered, That any person interested in this proceeding shall notify this Commission, by filing with the Interstate Commerce Commission, Office of Proceedings, Room 5354, Washington, D. C. 20423, on or before March 9, 1976, the original and one copy of a statement of his interest. Inasmuch as the Commission desires wherever possible (a) to conserve time, (b) to avoid unnecessary expense to the public, and (c) to have service of pleadings by parties in proceedings of this type only upon those who intend to take an active part in the proceeding, the statement of intent to participate shall include a detailed specification of the extent of such person's interest, including (1) whether such interest extends merely to receiving Commission releases in this proceeding; (2) whether he genuinely wishes to participate by receiving or filing initial and/or reply statements, and by attending and/or participating in the public hearing; (3) if he so desires to participate as described in (2), whether he will consolidate or is capable of consolidating his interests with those of other interested parties by filing joint statements in order to limit the number of copies of pleadings that need be served, such consolidation of interests being strongly urged by the Commission; and (4) any other pertinent information which will aid in limiting the service list to be used in this proceeding; that this Commission shall then prepare and make available to all such persons a list containing the names and addresses of all parties desiring to participate in this proceeding and upon whom copies of all statements must be filed.

It is further ordered, That in view of the fact that Section 204(a) of the Railroad Revitalization and Regulatory Reform Act of 1976 requires completion of this proceeding within 12 months of the date of enactment (February 5, 1976), an expedited procedure will be followed in this proceeding and extensions of any due dates established herein is not contemplated. Statements of intent to participate including comments on the contents of this order must be filed on or before March 9, 1976. Following the preparation of the service list a procedural order will be entered designating with certainty when the respondents and other parties must submit their evidence and arguments.

And it is further ordered, That a copy of this notice and order be served on each respondent, on each party to the proceeding in Ex Parte No. 305-RE, Increased Freight Rates and Charges, 1975 -- Recyclable Materials, on the Administrator of the Environmental Protection Agency and on the Secretary of Transportation, that a copy be deposited in the office of the Secretary, Interstate Commerce Commission, Washington, D. C., for public inspection, and that statutory notice of the institution of this proceeding be given to the general public by delivering a copy thereof to the Director, Office of the Federal Register, for publication therein.

By the Commission, Division 2.

ROBERT L. OSWALD

(SEAL) Secretary

APPENDIX A

MANNER IN WHICH EVIDENCE SHOULD BE SUBMITTED

All submissions (opening statement, reply statement and briefs) should be divided into seven parts. All evidence related to the National Environmental Policy Act of 1969 should be included in those seven parts.

PART I

Historical Evidence of Costs and Movements of Recyclable and Virgin Materials

A. Movements of Recyclable and Virgin Materials

Carriers should submit evidence on representative or repetitive rates as of September 1, 1975. This evidence may be based on sample studies with the burden on the carriers to demonstrate the relevance and validity of the procedures employed or it may be based on rates under which large volumes of the involved commodities moved in 1975.

To facilitate data processing and analysis of the movements, respondents should submit data in the following format. Respondents should take note of the requirements for an estimate of annual net tonnage in item 17.

1. Commodity and STCC No.
2. Origin and destination (city/state).
3. Origin rate territories.
4. Type of rate (single-car, multiple-car, or trainload).
5. Rate in cents per net ton (X-313 level as of September 1, 1975).
6. If multiple-car or trainload shipment, indicate rate reduction from single-car rate (in cents per net ton).
7. Complete tariff authority.
8. Minimum weight per shipment (net tons).
9. Average weight per shipment (net tons).
10. Average number of cars per shipment.
11. Average weight per car.
12. Car ownership (carrier-owned or leased, or shipper-owned or leased).

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13. Car type (as identified in A. R. R-1 Sch. 417).

14. Route of movement (single-line or interline).

15. Carrier(s) and miles for single-line and/or interline movements:

	Carrier	Short Tariff Route Miles	Route of Movement Miles	Point of Interchange and/or Destination
1st	_____	_____	_____	_____
2nd	_____	_____	_____	_____
3rd	_____	_____	_____	_____

16. Average revenue per car (line-haul revenues ÷ number of cars in the shipment).

17. Estimate of annual tonnage under rate (net tons 1970-1975).

B. Cost Evidence

Respondents should submit evidence on costs associated with the representative or repetitive movements of recyclable and virgin materials called for in (A). This evidence should include respondents' analysis of whether the current rates adequately reflect differences in costs due to:

1. distances traveled,
2. weight of shipments,
3. special equipment,
4. special handling,
5. equipment utilization including empty backhauls,
6. equipment maintenance, and
7. other factors.

Supplemental cost evidence should include the unit costs employed along with the method of their computation.

PART II

Historical Evidence on Utilization of Recyclable Materials.

Evidence should be submitted which shows the trend in utilization of the virgin and recyclable materials by territory since 1966- including prices and quantities of both recyclable and virgin materials and the effects of previous general rate increases on movements within and between territories. If carriers elect to submit extensive price and quantity data, that information should be presented in table form and comments should be included in the text of the submissions. (Imports and exports should be shown separately). This data should be accompanied by a discussion of the factors which affected utilization and prices for the recycled materials - i.e., market structure for the production and distribution of final products, storage facilities, etc.

PART III

Sensitivity of Recyclable Materials to Changes in Transportation Rates

Respondents should present arguments and evidence to support their position on the extent to which recyclable materials would be substituted for virgin materials if rates on the recyclable materials were lowered, or held down, while rates on virgin materials were allowed to increase with time. In connection with this analysis the following factors should be considered: Factors that affect utilization of recyclable materials and their potential substitution for virgin materials. For example, Are there technological factors that encourage or prevent substitution? Does the market structure (e.g., vertical integration), in any way affect utilization of either virgin or recyclable materials? Are there any government policies or programs which place recyclable or virgin materials at a competitive disadvantage?

Reference to the studies listed in Appendix B, or to other studies not listed therein (including analyses of demand and supply elasticity), is encouraged. A discussion of the assumptions and shortcomings of previous studies may also be included.

PART IV

Effects on Individual Railroads

Respondents should present evidence to support their arguments on the likely effects that rate changes would have on individual railroads' revenues and profitability. This part of the study will depend in part upon the conclusions reached in Part III and should include available data concerning evidence of trends indicating intermodal and intramodal shifts, if any, in the transportation of virgin and recycled or recyclable materials, including evidence attributing such shifts to changes in the rate structure for these materials.

Evidence of the significance of recyclable and virgin material traffic relative to total rail operations should be submitted (revenues and volume in net tons)

PART V

Service to Shippers of Recyclable Materials

Respondents should include a thorough discussion of the effects that rate changes have had and will have on service. Of particular concern is the issue of whether revenues will be adequate to induce railroads to undertake future investments to meet shippers' requirements. Shippers and carriers are encouraged to submit projections of service requirements and evidence of the carriers' ability to meet the shippers' past and future requirements for service.

PART VI

Alternative Rate Structures

Are there alternative carrier-operating practices or rate structures or tariff arrangements which would be more innovative or more flexible? Parties are encouraged to discuss new ideas and policies relative to rate-making.

PART VII

Other Evidence

All parties should endeavor to submit their evidence, including revenue/cost relationships, under one or more of Parts I through VI above. Miscellaneous evidence submitted under Part VII should indicate the specific purpose for which it is being introduced and the reason it does not fit within one or more of Parts I through VI.

APPENDIX B

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Mt. OTTINGER. I don't know what you have been asked to submit to the committee prior to this time, but in the past there have been serious problems with the Commission with respect to conflicts of interest between members of the Commission and the senior staff and the industries they are supposed to regulate.

I wonder today if we get a report on what——

Mr. STAFFORD. I am not aware of any serious difficulties.

Mr. OTTINGER. I had some go around a number of years back with a gentleman named Mr. Tucker who resigned from the Commission. He took offices nearby one of the carriers of which he subsequently became an officer. In order to technically be right with the statute he became an attorney for the general practice of law, but he took offices right adjacent to the carriers and was active with them.

I just would like some information with respect to the current situation with respect to interests of members of the Commission and members of the staff in regulated organizations.

Mr. STAFFORD. I believe that all that material was asked for in your questions.

Mr. Moss. It has all been supplied for the record.

The gentleman's time has expired.

Mr. OTTINGER. Thank you, Mr. Chairman.

Mr. Moss. The Chair recognizes the gentleman from Indiana, Mr. Sharp.

Mr. SHARP. Thank you, Mr. Chairman.

I would like to ask the Commissioners about the question of the entry and exit requirements for motor carriers in the country. The GAO report entitled, "Selected Views and Issues Related to Regulatory Reform in the Transportation Industry" on page 27 suggests that——

Mr. Moss. Have we supplied the GAO report to the witness?

Mr. SHARP. I can summarize quickly what the claim is, Mr. Chairman, and ask questions, I believe.

Mr. STAFFORD. I think GAO gave us an indication of what they had——

Mr. SHARP. The suggestion on page 27 is that they discovered that about 85 percent of the time of the Commission, at least according to one ICC official, is spent in determining the entry requirements and exit requirements in individual cases and that perhaps a lot of this could be eliminated.

I wonder if you care to comment on the present regulations and what might or might not be done.

Mr. STAFFORD. I would like to comment, first, on the GAO report. I think it is a well-balanced report. They have gone in and talked to the shippers and the carriers and everybody and they have come out just about the same place we are as to a position that it would be disastrous to make any major changes, that it would be chaotic and everything like that.[1]

Now as to the percentage—

Mr. O'NEAL. I guess I would like to comment on that.

I don't think I would agree totally with that statement. I think where it comes from is the fact that a large number of the cases decided by the Commission are motor operating rights cases. That does not necessarily mean that that proportion of time is spent on those cases. There is a considerable amount of time spent on operating rights

[1] See Appendix p. 655 (GAO report). The report made no conclusions.

cases, but I would just guess that it is maybe 40 percent rather than 85 percent if you are talking strictly about motor carrier operating rights cases.

One reason for that is a number of these cases are fairly simple in nature. The issues are not complicated and are handled by modified procedure. That is, the parties submit their positions on paper. There is no oral hearing and this serves as a hearing and a decision is made in a relatively short period of time.

Mr. SHARP. What is a short period of time?

Mr. O'NEAL. That is why I said relatively a short period of time. We have been concerned about the length of time that it has taken to make some of these decisions. I think they are at an average of about 9 months now for these cases. One of the things we did in the blue ribbon panel effort—this is the effort to reform some of the actions, some of the procedures of the Commission—was to try to reduce that time to a much shorter period.

We have a rulemaking at the present time that would require, if approved, the applicant to submit its case at the outset so that we don't spend a lot of time later on in the proceeding making the application more specific as to what is sought. Also this change should mean better productivity out of the members of the staff of the agency.

Some of this, we hope, will come from the time limits that we will impose internally on each aspect of the decisionmaking process.

Mr. SHARP. Could I ask you about the substance of the policy suggestion there that we eliminate the entry-exit requirements. What would that do to the whole regulatory scheme?

Mr. STAFFORD. Chaos. The fact is, Mr. Congressman, in that same report that you are talking about on page 17 of the GAO report it says, "The ICC is a needed and effective organization in that it brings stability of rates and services to the industry." [1]

I believe they said it all right there.

Mr. SHARP. Well, I doubt if there is a massive move on to eliminate the ICC overnight, though I know that some people would like to do that.

Mr. STAFFORD. Yes.

Mr. SHARP. I was wondering about specific proposals for entry and exit requirements. Does that in essence cover the way in which you could operate any sort of procedure?

Mr. STAFFORD. Yes, it eliminates casework. We might have to triple the size of the General Counsel's Office, or more, but more than that, you are not going to have service to the small shippers, the small entrepreneurs.

Right now and for several years the Government has been putting more and more money into various programs around this country in order to help depressed areas. For instance, there is the Appalachian program, which is administered by the Department of Agriculture. I recall speaking just in the last month or two to the area comprised of the southwest corner of Missouri, the southeast corner of Kansas, all of Arkansas, the corner of Oklahoma and all of Louisiana and they

[1] See Appendix p. 673 (GAO report). The statement quoted by Chairman Stafford is GAO's summary of comments made in interviews with some motor carrier representatives and individuals involved in shipping regulated goods via truck.

are very concerned that there is going to be any consideration given to the Department of Transportation's bill on trucking.

They were very concerned that Congress would permit the railroads to get rid of all of their unprofitable lines because they saw a great influx of the small businesses moving to the bigger cities or just going out of business.

Mr. SHARP. Let's try to be more specific. Is it your contention that service simply would not go to places that might be considered too small or not profitable? Is that what your contention is?

Mr. STAFFORD. I am sorry. I didn't bring a printout of a relatively small carrier that serves Kansas, Nebraska, and Colorado. In their printout they show the reality of being regulated regular-route carrier. It shows how much money they realized from each of their shipments that they carried.

Carrying into little towns means that they realize only $4.25, or maybe $7, for driving to a town 30 miles away. They do this because it is required.

Once there are no requirements on entry, and no requirements on exit, that type of service will disappear.

Mr. CERRA. Mr. Sharp, if I may elaborate a little on the chairman's statement, the key to regulation is service. When you get a license to operate, you must provide service to the small shippers as well as the large shippers. With free entry there would be no such requirements and the Congress, in its wisdom in 1935, sought to achieve that kind of stability for all shippers. If you permit the door to open up and anybody can come in, they can do what they please without any regulation or any requirement that they serve whom they want to serve.

Mr. SHARP. Thank you, Mr. Chairman.

Mr. Moss. The gentleman's time has expired.

The Chair recognizes the gentleman from New Jersey, Mr. Maguire.

Mr. MAGUIRE. Thank you, Mr. Chairman.

I want to ask about the Bureau of Economics. Mr. Chairman, does it get involved in specific cases or does it simply do general studies? That is, does it get involved in the granting of operating authority type of questions that the Commission deals with?

Mr. STAFFORD. It cannot get involved in every case just because of the magnitude of the problem, but they have reorganized their offices with specialties being set up for specific activities. I would like for the Director of the Bureau to speak to this, if you don't mind.

Mr. MAGUIRE. I would be happy to have him speak to it, but my question is, Do you ever get involved in specific cases where operating authority has been requested? I would just like a yes or no answer to that first.

Mr. STAFFORD. Mr. Olson.

Mr. OLSON. Yes, sir.

Mr. MAGUIRE. Can you tell us out of all the cases that the Commission deals with roughly what percentage of cases you would get involved in? Give me a ball park estimate and what you do in those cases.

Mr. OLSON. I think, Mr. Maguire, that to give you a statistical answer to the number of cases we get involved in would be deceiving.

Mr. MAGUIRE. How many have you been involved in during the last year?

Mr. OLSON. About 100. I think the answer to that should be framed this way, though, Mr. Maguire, and that is, that the cases that

we are involved in are principally the important cases in which economic issues are at stake.

Mr. MAGUIRE. What would constitute an economic issue?

Mr. OLSON. For example, ex parte 270 and ex parte 271 which is a total examination of the railroad rate structure, the financial underpinning of that rate structure, and examination for the future as to what that rate structure ought to look like.

We have had approximately five people working on that particular case and its proceedings for the last 3 years.

Mr. MAGUIRE. Have you been involved in any rate questions with regard to applications for operating authority by motor carriers?

Mr. OLSON. Rate questions do not ordinarily enter into the decision-making end, so the answer is no.

Mr. MAGUIRE. That applies to motor carriers and also to other modes?

Mr. OLSON. Yes.

Mr. MAGUIRE. All right. That really provides the baseline for my further questions because it concerns me very much that rates are not considered in the operating authority application review process.

In September 1973, for example, there was a decision which denied extension of operating authority to Nationwide Carriers, Inc., to carry TV antennas from New York to Minnesota, and in that decision, the Commission said,

> It is well settled that existing carriers are entitled to all the traffic they can handle adequately, efficiently and economically within the limits of their authorities.

Now in determining whether service is provided "economically," which is one of the criteria mentioned in this decision, why wasn't the applicant's proposed freight rate considered or why is it not considered in other cases as well as in this case?

Mr. OLSON. I think the General Counsel can help us out on that.

Mr. CERRA. I think, Mr. Maguire, what we are talking about is a balancing function the ICC engages in when it is considering applications for new authority.

Under the Interstate Commerce Act, Section 207, if it were a common carrier, the applicant would be required to show that there is a public need for the service. Public need has several factors that are included within it, one of them being the adequacy of existing service.

Now, under the national transportation policy, we have to assure a sound and economical transportation service. You might have a situation where a man, untried in motor carrier operations, comes in and says, "Well, I know I can render this service at a lesser rate than the existing carriers," and he proposes a low rate but he comes in with no other financial data to show that his estimate is anywhere near even returning him to his out-of-pocket costs.

Mr. MAGUIRE. That is a case which, obviously, is excluded on that basis, but what about a case where somebody makes a showing that the proposed rate would be both lower and at the same time compensatory?

Mr. CERRA. I don't know of any case we have ever had where we rejected a motor carrier application on that basis, but the head of our bureau that handles that might have further information on that.

Mr. MAGUIRE. You don't know of any case that an application was rejected on that basis?

Mr. CERRA. On the basis that the rates were lower, the service was better than existing carriers, and that the rate was also compensatory.

Mr. MAGUIRE. Then you are saying that all such applications are accepted?

Mr. CERRA. If such an application would be filed, that would be one of the considerations that the Commission would give to its overall determination of a need for the service. We don't exclude it automatically.

Mr. MAGUIRE. So you are saying that the rates that are proposed are, in fact, one of the criteria that are evaluated in the process of granting additional operating authority?

Mr. CERRA. No, sir.

Mr. MAGUIRE. Well, you know, how can you have it both ways? Either it is or it isn't. A moment ago you said it was not and then you just said that it was. Now which is it?

Mr. SCHACK. Where a motor carrier seeks to prove a need for a new service, the issues of rates really does not come into play. One of the problems would be that if the applicant proposed lower rates than existing carriers, there would be nothing to prevent him at some further point down the line after his application was approved and his authority was issued from raising those rates.

So the only issue of rates in these operating rights applications is as to whether the existing carrier's rates impose an embargo on the traffic.

Mr. MAGUIRE. Well, I still don't understand why proposed rates that were well-argued and that had a basis that was developed for being compensatory but lower would not be—I mean, am I right in thinking that the Rate Bureaus are the ones that come in with recommendations for rates, generally speaking? Is that right?

Mr. STAFFORD. Yes.

Mr. MAGUIRE. For the existing authorized carriers.

Mr. STAFFORD. Although there is nothing to keep an individual from coming in on his own.

Mr. MAGUIRE. These are industry groups; is that correct?

Mr. O'NEAL. A rate bureau is an industry group. A number of independent rates are filed by individual carriers, though. The point he is making, I think, is that rates are not considered in motor carrier operating rights cases at the present time.

Mr. MAGUIRE. On page 22 of your statement, Mr. Stafford, you indicate that the level of service is what determines adequacy, but I really wonder if quality and cost of service is not also important in judging adequacy.

Mr. SCHACK. Improvement of services is the key factor that the Commission considers under the statute in deciding whether an application should be granted or not, and if the traffic will move at lower rates and will move more efficiently, that could be a factor.

The Commission is looking for the public support in these applications in that the shippers indicate the present service is inadequate for whatever reasons. That is the major factor in considering whether the application should be granted.

Mr. MAGUIRE. So if it is adequate in the sense that the right number of carriers is available, the level of service is judged to be sufficient, et cetera, et cetera, it does not matter what it costs, right? Is that what you are saying to me? As long as that is maintained, the

Commission will protect the people providing that kind of service.

Mr. STAFFORD. Congressman, could we look up that case and give that later?

Mr. MAGUIRE. I am making a general proposition. I would love to have further information on that.

Is my statement an accurate one that as long as the number of vehicles and the level of service is judged to be adequate or sufficient that it then does not matter what it costs? Is that right?

I mean, that you will protect that existing service, is that correct?

Mr. STAFFORD. Unless a new carrier can show some new innovation, that some new development is going to give a much higher form of service even though there may already be——

Mr. MAGUIRE. But you have already told me that the rates don't affect the application.

Mr. CERRA. Congressman, a very famous case we had in the Supreme Court, the *JT* and *Rausch*, two cases that were consolidated for hearing. The shipper was a canning company that could not use the existing service of common carriers because he felt that their rates would not permit him to be competitive in the market and he sought to support the contract carrier for authority to deliver his canned goods to his various outlets. There the Court said that the length of the shipper's purse is a significant factor which should be considered.

So we do have some precedents in those types of situations where the common carrier rates for services are too prohibitive to permit an individual shipper to get his products to market.

Mr. MAGUIRE. But as long as they are on the highway scale they are OK, right?

Mr. Moss. The time of the gentleman has expired.

The Chair recognizes the gentleman from Texas, Mr. Krueger.

Mr. KRUEGER. Thank you, Mr. Chairman.

I wish to thank the members of the panel for being here this morning. I should like, first, to look at page 2 of the statement of Chairman Stafford where a quotation is given:

> The Commission's basic mission is spelled out in the National Transportation Policy which precedes the Interstate Commerce Act and we are told that it mandates the Commission "to promote safe, adequate, economical, and efficient service and (to) foster sound economic conditions in transportation and among the several carriers (and) to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices."

Now what I would like to pursue in the time available to me this morning is what the Commission considers to be the role of competition in achieving its mandate stated on page 2?

Mr. STAFFORD. What do I conceive the mandate of competition to be?

Mr. KRUEGER. Yes.

In other words, the mandate as it is given here refers specifically to unfair or destructive competitive practices. To what extent is the Commission by its actions actually doing something to foster competition?

In other words, is the basic assumption—competition—by nature unfair and destructive and therefore to be avoided, or is the ICC proceeding under the assumption that there is some useful kind of

competition and that we should, through the ICC practices, seek to foster competition?

Mr. SCHACK. Sir, the Commission receives approximately 5,000 applications for motor carrier authority annually and of those, 85 percent are granted in whole or in part, and of those applications, approximately 500 a year are brand new entrants into regulated transportation.

Mr. KRUEGER. In your judgment, then, as you have been performing your duties you have been engaging in fostering competitive practices and encouraging competition?

Mr. SCHACK. The Commission judges the applications that come before us and looks at the requested shipper need and the Commission is looking for improvement of transportation to meet those stated shipper needs.

In 85 percent of the cases the Commission decision is that there is a need for the proposed new service in whole or in part.

Mr. KRUEGER. So you are saying 85 percent of the time when people apply they are likely to receive permission to provide the services and, therefore, by and large, you believe that your actions would indicate that you do encourage competition.

Mr. STAFFORD. Mr. Congressman, may I add just a thought.

The Department of Transportation just not too long ago made a study of a great number of shippers in this country who were served by the trucking industry. About 85 percent of them, I believe it was, or 87 percent said that they were completely satisfied with the service they were getting, 4 percent said there were too many trucks, 3 percent said there ought to be more trucks.

We think that we are serving the shippers, the consumers, adequately and I believe that that study by the Department of Transportation proves that. We think we are doing the service that Congress expects us to do here.

Mr. CERRA. Mr. Krueger, the significant example of where we require competition is the case we recently had in the Supreme Court called *Dixie Highway Express* in which the lower court had rejected the Commission finding permitting additional carriers in and the Supreme Court summarily reversed them saying if the ICC found a need for this competition or the need for the service they were entitled to do it.

You have to go on the basis of whether this was substantial evidence to support them.

Mr. KRUEGER. I think this is a very important question, whether or not the ICC does in fact attempt to encourage competition.

Although I can understand that the shippers may, by and large, feel that current practices are in their benefit as compared to some other possibility, I don't know that that necessarily is of itself convincing.

As Hamlet said when he saw the ghost, "We would rather keep those ills we have than fly to those that we know not of."

I think it is possible that some of the people may figure, whether they like the present situation or not, they are even more terrified by the thought of what might result either if the current situation were to be changed or would have more or less regulation.

Mr. STAFFORD. Too many of them remember 1934, 1933 when things were bad and——

Mr. KRUEGER. I think too often even in Government we remember 1934 and 1933 and forget that we are now in 1976. That is my concern.

Let me go to another question and that is on page 23 of your statement. You indicate that as you attempt to seek some sort of cost benefit analysis of regulation, you point to the difficulty of showing the direct economic benefits of current regulation.

In the central paragraph you indicate: "Furthermore, these 'cost of regulation' statistics are highlighted with very little, if any, mention given of the contervailing benefits of regulation."

I wonder, would you care to elucidate for some of us some of the countervailing benefits of regulation, the noneconomic benefits provided that you feel are very difficult to quantify.

Mr. STAFFORD. Well, for instance, if you are talking about the railroad wanting to abandon its rails and if you are from a small community or from any area of this type and suppose it is a marginal financial program for the railroad, if we say, "No, you must continue to serve that," yes, it may create some added cost to the railroad. That is a part of the cost of regulation.

But how do you really quantify the social benefits and the real benefits of small shippers and, the community that is involved, or communities that are involved on that route. You are going to close down some businesses the day you close down that railroad.

So how do you quantify in dollars-and-cents fashion the benefits that those communities receive as against perhaps the railroad's cost for having supplied that extra service?

Of course, Congress has just seen the benefit of this when it passed this rail bill here a short time ago. You added a proposal in there that permits States, communities, businesses to maintain those roads even if the railroad wants to abandon it as long as the State, the community or the business is willing to pay after the first year. The Government pays the first year 100 percent. The next year the Government pays 90 percent of the cost and so on.

Mr. KREUGER. Now when you talk on page 24 of the evaluation of the cost benefit analysis that has been developed recently as applicable to your mission, I am wondering what that cost benefit evaluation revealed.

Mr. STAFFORD. Could I ask Mr. Olson, who is our Director of the Bureau?

Mr. KRUEGER. That will be fine.

Mr. OLSON. Congressman, we are right in the middle of a cost benefit analysis series. We have in process or complete six projects in the cost benefit analysis area starting from about 6 months ago.

The first study addressed the question of cost benefit analysis and its applicability at all to the Commission. We conducted an initial study to examine what the subject was all about.

The second study examined the applicability of the various techniques that are available in practice in Government and outside Government to possible application to Commission processes.

The third case addressed the use of the process of cost benefit analysis to abandonment proceedings and we are already beginning to use that.

As a matter of fact, as late as last week we found an opportunity to use that particular process.

The fourth study which is in process and shortly to be completed is an in-depth analysis of the book by Thomas Moore, who is the economist who has espoused the cost of regulation as a theme song for quite a number of years now.

Our effort is to review that work in great depth and add to it the other side of the equation which is the benefit side of the equation.

The fifth and sixth projects are addressing the question of entry control from both the management standpoint and from an economic standpoint. That is particularly in the motor carrier area. Examining the question of whether or not and to what extent entry control as an economic concept is applicable to our approach to entry control and whether or not our approach to entry control from a management standpoint is cost/benefit analytically sound.

Mr. KRUEGER. Thank you.

I believe my time has virtually expired, and although it would have been nice to have asked questions on whether or not small operators understand the procedures well enough to get through them promptly enough; perhaps that wil be allowed some later time for questioning.

Thank you, Mr. Chairman.

Mr. Moss. The gentleman from New York, Mr. Scheuer.

Mr. SCHEUER. I yield to Mr. Moffett.

Mr. Moss. The gentleman from Connecticut, Mr. Moffett.

Mr. MOFFETT. Thank you, Mr. Chairman.

Gentlemen, I would like to focus on another area but one that relates to, I think, everything that has been discussed here this morning and that is the area of the independent public counsel. I would like to, if I might, in my 5 minutes focus in on attempting to get the view of what the Commission's perception is of the function of independent public counsel and what it should be.

I think, as you are all well aware, you have a prototype within your Commission, that does have considerable support, I think, in this subcommittee and the full committee and certainly in the Public Works Committee and probably throughout the Congress.

Now I understand from an ICC press release that prior to the creation of the Office of the Rail Public Counsel the Commission had agreed to establish more or less an in-house Office of Public Counsel, is that correct, Commissioner Stafford?

Mr. STAFFORD. We had agreed to the establishment of the office and then within a week I think Congress had decided, you gentlemen had decided, that you should have a presidentially appointed Counsel.

We gave it certain powers and a certain period of time to serve. So, in effect, you have taken from the hands of the Commission considerable of what we had in mind.

Mr. MOFFETT. So we are not talking about duplication, then? In other words, what effect did our action have upon your establishment?

Mr. STAFFORD. Your action, in effect, related only to railroads and has created some question about the balance and so we should expect that the Public Works Committee will take this matter up when they take up their legislation.

Mr. MOFFETT. Well, did your vote in support of the public counsel—what was it, a 5 to 4 vote, as I recall?

Mr. STAFFORD. I believe that is right.

Mr. MOFFETT. Did your vote go toward the creation of a public counsel that would have across-the-board ICC jurisdiction.

Mr. STAFFORD. Yes.

Mr. MOFFETT. Is it fair to say that it is the Commission's position, then, that the public counsel should have across-the-board jurisdiction?

Mr. STAFFORD. That was our judgment. That was a majority judgment and, as you say, a 5 to 4 vote.

Mr. MOFFETT. So you don't have any plans, then, to have two public counsels?

Mr. STAFFORD. No; we don't, although, of course, the President has not yet appointed the public counsel. That will come under the rail bill that you gentlemen helped pass and that should be forthcoming shortly.

We have been having our problems about funds and bodies and the Office of Management and Budget has indicated that we could take 15 positions, I believe it was, from our compliance program and put those in there.

The Managing Director has been working on this matter for some time. We feel that we should have a minimum of 30 people at least to start with until whoever the public counsel is going to be has an opportunity to work with us in determining the proper number.

Mr. MOFFETT. Now, let me ask you this. I can't speak, obviously, for the Public Works Committee, but I understand the sentiment there is to expand the jurisdiction well beyond rails. Can we be assured that the Commission will be supportive of any legislation to expand the responsibilities of the public counsel?

Mr. STAFFORD. Most certainly.

Mr. MOFFETT. OK.

Mr. STAFFORD. We are going to support anything Congress passes. We consider ourselves to be an arm of the Congress.

Mr. MOFFETT. All right. Let me ask you this. You talked about the number of staff positions and so forth. What is your view of what those people would be doing and what the Office of Public Counsel should be doing?

Mr. STAFFORD. There may be some differences of opinion, but in your rail bill that you passed recently you spelled out certain actions that you expect the old RSPO Office to be doing in adjudging the rail program that was put together by the Secretary and we look to it that—I say "we." I, because we have not voted on this particular subject.

So I look at it as being a need to carry out the same kind of an outreach program that we had under the RSPO Office.

Now this must go before the full Commission.

Mr. MOFFETT. Do you go beyond outreach?

Mr. STAFFORD. Yes.

Mr. MOFFETT. And say also aggressive advocacy within the agency?

Mr. STAFFORD. Within the agency we think it is to be used to help in preparing the record and in making a full record in the cases that come before us, yes.

Mr. MOFFETT. Recognizing that it may be a thorn in your side?

Mr. STAFFORD. I have absolutely no doubt that it is going to be a thorn in the side.

Mr. MOFFETT. Hopefully, not a viper in the bosom.

Thank you.

Mr. Moss. The gentleman from New York, Mr. Scheuer.

Mr. SCHEUER. Under the Energy Conservation Act of 1975, your agency was required to file within 60 days of passage, which was on December 22—the 60 days expired last Friday, a report with respect to energy conservation policies and practices which your agency has instituted subsequent to the Arab oil boycott of October 1973. Do you know whether that report was filed?

Mr. STAFFORD. May I ask Owen Katzman to answer?

Mr. KATZMAN. Yes, Mr. Congressman.

Mr. SCHEUER. Why don't you take the microphone?

Mr. KATZMAN. That was submitted on Friday.

Mr. SCHEUR. Can you tell us, in general terms, what policies you have taken since October 1973 to conform with the often repeated policy of the U.S. Government to require energy conservation in Government wherever possible?

Mr. KATZMAN. Yes. We issued an operational feasibility statement that required carriers for new authority to show that their operations would be energy-efficient when they came in and applied for authority. There is a very significant action with the gateway elimination series of proceedings in which we allowed carriers to eliminate, to go directly from point to point where previously they had been authorized, if they wished to, to serve two points by observing a sometimes circuitous gateway. By that proceeding alone it has been estimated by the Environmental Protection Agency that about 500 million gallons of fuel have been conserved.

Mr. SCHEUER. Now it is my understanding that gateway provision still prevails where the savings would be over 20 percent or has that whole thing been eliminated?

Mr. KATZMAN. There is no such thing as gateways anymore.

Mr. SCHEUER. You have eliminated that provision?

Mr. KATZMAN. Yes. Now carriers, if they want to serve a particular point, they have to specifically ask for such authority.

At one time carriers were allowed to join two grants of authority to serve a community that they had not been authorized to serve.

Mr. SCHEUER. It is my understanding that where the reduction in circuity exceeds 20 percent, the carrier is precluded from operating directly between end points without receiving ICC approval to avoid gateways.

Mr. KATZMAN. That is correct, but we have——

Mr. SCHEUER. Why should that be?

Mr. KATZMAN. Because when those——

Mr. SCHEUER. Why should they go through a whole administrative proceeding to do what is obviously intelligent and cost efficient and energy efficient?

Mr. KATZMAN. The act was created to require carriers to establish a need for service between points that they wished to serve. Now it turned out that sometimes carriers got two authorities and wished to join these two authorities.

Mr. SCHEUER. Do you want to let Mr. Stafford take over?

Mr. STAFFORD. Yes, I would be happy to speak on that.

Mr. SCHEUER. Why should they have to ask permission each time they want to do something that is transparently energy-efficient, labor-efficient and cost-efficient and in every other way efficient? Why should they have to work their way through the bureaucracy when common-sense dictates the routes they should take?

Mr. STAFFORD. Of course the establishing was patently out of line when it came to saving fuel because you also are regulating a lot of other regular route carriers who have a requirement to serve areas and because you then could possibly create a lot of new authority.

You had to check each one to be sure that their efficiency was proper and that was the reason we chose that 20-percent figure. If the deviation was 20 percent or less we permitted them to go direct because we figured that they already were a strong competitor in the market.

So what you are doing is creating a whole new group of competitors in the market if you permit those who have more than 20 percent circuity to go direct where their request is original. I never spoke to that issue.

Mr. SCHEUER. What is wrong with creating a whole new group?

Mr. STAFFORD. Well, the basic purpose of regulation is to maintain a healthy transportation system and once you permit all of those carriers to move into the same market you have created a very unhealthy situation.

You are going to have energy inefficiency because many of those carriers will be carrying piece-loads, part-loads, and I think you need to maintain as full a load as possible to maintain the economic well-being of those carriers, many of whom are already in that market.

Mr. SCHEUER. Let's talk about the business of carrying half empty loads or empty loads which you view as energy inefficient. What have you done about your policy on back hauling which, as I understand it will not allow private firms which use trucks to deliver raw materials to a subsidiary manufacturing plant to use those same trucks to carry back the finished product to the parent company on the return trip?

The ICC requires that the truck come back empty, if my information is correct. Am I laboring under a misunderstanding?

Mr. STAFFORD. It appears that what you are speaking about is the exempt carrier suddenly wanting to become a regulated carrier to carry commodities that may have been the front haul of a regulated carrier who has to have a balanced load because we require it and the private carrier has no responsibility to the Government or through the ICC.

There are many instances where these carriers have been able to work out a program so that they could have some form.

Mr. SCHEUER. Do you still require them to come back empty?

Mr. STAFFORD. No, we do not require anybody to come back empty.

Mr. SCHEUER. Then you don't have any back hauling limitations that would prohibit that?

Mr. STAFFORD. You are speaking of two different situations. We never told him he could go there in the first place. A private carrier handling unregulated commodities can go anywhere in the world he wants. But, now what you are saying is that we should take away business from the regulated carriers, even though they have an obli-

gation to serve, must have proper insurance coverage, proper timetables—all our requirements.

Now what you are indicating is that some carrier who handles farm commodities that are not regulated would like to take away business from regulated carriers who are required to give that service.

Mr. SCHEUER. I mean that before, when we were discussing the business of the gateways, you said you needed that regulatory authority to stop carriers from traveling half empty or all empty and here in another regulation mandate that trucks travel unnecessarily long distances.

Mr. STAFFORD. No, we are not mandating it at all.

Mr. CERRA. Mr. Scheuer, If I may answer, you are talking about an exemption that the Congress put in the Interstate Commerce Act for private carriers. If you were a manufacturing concern and you wanted to ship your own commodities out or into your place, the ICC has no regulation over you—no regulation whatsoever. But what you are saying now is that this same private trucking concern can take for hire transportation for other people and the ICC says they must first get a license from the Interstate Commerce Commission and that was decided by the Supreme Court in the *Schenley* case in the 1950's.

Mr. STAFFORD. And many of them do this, sir.

Mr. SCHEUER. So that they can get a license.

Mr. STAFFORD. Yes; we have been able to hold in their behalf under certain circumstances.

Mr. SCHEUER. So they now get a license to come back to pick up extra cargo.

Mr. STAFFORD. If they can show a need for that, and many of them have.

Mr. SCHEUER. How difficult an administrative process is this? How expensive? How long?

Mr. STAFFORD. I don't consider it too difficult if you show a need.

Mr. CERRA. They could also come back by carrying exempt commodities which we don't regulate such as farm produce.

Mr. SCHEUER. Thank you, Mr. Chairman.

Mr. Moss. The Chair is going to adjourn the hearing at this time because of the hour. We will have you back and at that time we will concentrate primarily upon your function of regulation of the railroads of the Nation.

I will have staff contact you so that we will be able to focus on that rather promptly.

Mr. STAFFORD. Thank you.

Mr. Moss. I want to thank you all for your appearance here today and we will be in touch with you for the purpose of scheduling the next hearing.

The committee will stand adjourned.

Mr. STAFFORD. Thank you, Mr. Chairman.

[Whereupon, at 12:13 p.m., the subcommittee adjourned, subject to the call of the Chair.]

REGULATORY REFORM—INTERSTATE COMMERCE COMMISSION

FRIDAY, MARCH 5, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. John E. Moss, chairman, presiding.

Mr. Moss. The committee will be in order.

Today we begin this subcommittee's second day of regulatory reform oversight hearings on the Interstate Commerce Commission.

We will focus in today's inquiry upon specific issues of railroad regulation.

Because this subcommittee is charged with responsibility for oversight, we are greatly interested in the implementation of the recently enacted Railroad Revitalization and Regulatory Reform Act of 1976, which originated in our parent committee, the Committee on Interstate and Foreign Commerce.

This comprehensive act was designed " * * * to provide for an extensive overhaul of railroad rate regulation by the Interstate Commerce Commission. The provisions eliminate needless or harmful ratemaking practices which will encourage effective competition and protect consumers."

Title III of the act contains provisions intended to reform and improve the process by which the ICC regulates the railroad system.

We hope the Commissioners today will fully air the regulatory benefits and also the possible difficulties that they envision may arise from the implementation of this act.

In considering with the Commissioners the state of health of this Nation's railroad system, we shall also pursue avenues of inquiry which will assist this subcommittee in its ongoing study of the need for regulatory reform.

In today's review of Commission regulation of our Nation's railroads, we shall consider both the impact of existing regulation on the consumer and industry and the need for more, less, or better regulation.

We will explore the issues of conglomerate control of railroads; the costs of regulatory delay; the use of the Commission's early warning system; Commission forecasting and planning; efforts to eliminate the freight car shortage problem; and Commission treatment of rail abandonment or discontinuance.

At our last hearing, the subcommittee addressed areas of apparent deficiencies in the Commission's compliance program as reported by two internal Commission reports.

Today, we hope the Commission Chairman will provide the subcommittee with a timetable detailing the Commission's plan and the methodology for reviewing the serious allegations in these two reports. The Chair would like to suggest that if the Commission's review largely corroborates the deficiencies noted in these reports, the corrections of these deficiencies should be a major Commission priority.

The Chair also requests that a copy of the Vice Chairman's review of the compliance program immediately upon completion be transmitted to this and other appropriate congressional committees for consideration.

Some 6 years ago when the Commission came before this subcommittee, I commented on the importance of timely and effective enforcement of the law. At that time, I stated that I had a strong feeling that there was much in the Interstate Commerce Act that had to be looked at and enforced if the public was to be served.

Let me observe that I still hold to this feeling and let me assure you that this subcommittee will press ahead with its effort to insure that this law is faithfully executed.

Without objection, the record will be held open for 10 days to receive additional agency information requested by the subcommittee and to allow staff to include in the record relevant responses to this subcommittee's June 1975 questionnaire and supplementary documents and studies.

Mr. Chairman, the subcommittee welcomes you again.

This is a continuation of the hearings. I believe all of the members, the staff and yourself, have been sworn. Is that correct?

Mr. STAFFORD. Yes.

Mr. Moss. Are there any members of the staff who have not been sworn when they previously appeared?

Would you please stand.

Do you and each of you solemnly swear that the testimony you are about to give this subcommittee shall be the truth, the whole truth, and the nothing but the truth, so help you God?

The WITNESSES. I do.

Mr. Moss. Will you identify yourselves to the reporter for the hearing record.

Mr. BROOKS. Robert Brooks.

Miss ROSENAK. Jan Rosenak.

Mr. BERMAN. Richard Berman.

Mr. MCCORMICK. William J. McCormick.

Miss JOYCE. Bernita A. Joyce.

Mr. Moss. Do you have a statement at this time?

FURTHER TESTIMONY OF HON. GEORGE M. STAFFORD, CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY A. DANIEL O'NEAL, COMMISSIONER; ARTHUR J. CERRA, GENERAL COUNSEL; ROBERT J. BROOKS, DIRECTOR, OFFICE OF PROCEEDINGS; GEORGE M. CHANDLER, ASSISTANT TO THE CHAIRMAN; ERNEST R. OLSON, DIRECTOR, BUREAU OF ECONOMICS; BERNITA A. JOYCE, BUDGET AND FISCAL OFFICER, MANAGING DIRECTOR'S OFFICE; BERNARD G. GOULD, DIRECTOR, BUREAU OF ENFORCEMENT; THOMAS BYRNE, ASSISTANT TO THE DIRECTOR, BUREAU OF OPERATIONS; J. RICHARD BERMAN, BUREAU OF ACCOUNTS; JANICE M. ROSENAK, DEPUTY DIRECTOR, SECTION OF RATES, OFFICE OF PROCEEDINGS; WILLIAM J. McCORMICK, CHIEF, SECTION OF FINANCIAL ANALYSIS; AND THEODORE C. KNAPPEN, LEGISLATIVE COUNSEL

Mr. STAFFORD. No, sir, we don't. We stand on our previous statement. We will be happy to answer any questions you have.

We are delighted to be back with you.

Mr. Moss. Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman.

In recent years, many railroad companies have been taken over by conglomerates. Frequently substantial amounts of assets have been transferred from these railroads to their conglomerate parents, resulting in a serious deterioration of the financial integrity of the railroads.

In our investigation of the conglomerate transfer problem, we asked the Commission several questions about this situation and in response to our investigation, we received a memorandum which I would like to introduce into the record at this time, Mr. Chairman.

Mr. Moss. Under the previously agreed upon unanimous consent request, the material will be placed in the record.

[Testimony resumes on p. 333.]

[The memorandum referred to follows:]

UNITED STATES GOVERNMENT

Memorandum

ATTACHMENT A

TO : Robert L. Rebein
Managing Director

DATE: DEC 3 0 1975

FROM : John A. Grady
Director, Bureau of Accounts

SUBJECT: SUPPLEMENTAL INFORMATION REQUESTED BY CONGRESSIONAL OVERSIGHT COMMITTEE

Major transactions have taken place between carriers and their parents or affiliated companies that have resulted in about $3 billion in financial resources transferred from carriers. The resources transferred include land and real property, mineral deposits and mineral rights, air rights, investment securities, investments and equity in affiliated and subsidiary companies, use of carrier tax credits and unjustified management fees. About $2.7 billion of this amount represents the estimated fair market value of assets transferred.

The carriers and the total estimated amounts (stated in millions) affecting each are as follows:

1.	Bangor & Aroostook RR Co.	$ 5.1
2.	Illinois Central Gulf RR Co.	198.5
3.	Louisville & Nashville RR Co.	2.3
4.	Denver and Rio Grande Western RR	8.7
5.	Missouri-Kansas-Texas RR Co.	37.8
6.	Chesapeake & Ohio Ry. Co.	291.1
7.	Kansas City Southern Ry. Co.	65.0
8.	Southern Pacific Transportation Co.	508.5
9.	Union Pacific RR Co.	1,234.4
10.	Atchinson, Topeka & Santa Fe Ry. Co.	538.4
		$2,889.8

Generally, independent appraisals were not available as a basis for valuing the properties. The amounts shown are based on the best information available to our audit staff. However, while appraisals might result in a higher or lower amount in some of the instances listed, we believe that the overall amount is probably conservative.

The details of the individual transactions are enclosed as requested by your office.

Please advise if I can be of further assistance or provide additional information on this matter.

Enclosure (1)

Schedule of Financial Resources Transferred From Carriers

	CARRIER	TIME FRAME	TRANSACTION	Estimated AMOUNT (Millions)
1.	Bangor & Aroostook RR Co.	10/64-8/67	Management Fees and other charges	$ .7
		1966/1967	Dividends to reduce holding company's debt to carrier	.9
		1965/1967	Regular Dividends	.4
		1964/1969	Federal income tax benefits to holding company, including investment credits contributed by carrier	3.1
		TOTAL BANGOR & AROOSTOOK		$ 5.1
2.	Illinois Central Gulf RR Co.	11/72	Dividend of carrier's investment in holding company stock. Book value of investment $21,367,048. Fair Market Value at dividend date	$ 28.8
		1965/1972	Sale of Air rights to Illinois Center Corp., subsidiary of Industries. Est. Fair Market Value	169.7
		TOTAL ILLINOIS CENTRAL GULF		$ 198.5
3.	Louisville & Nashville RR Co.	11/72	Transfer of land to L & N Investment Corp. (LNIC) in exchange for stock of LNIC Book Cost: $328,568. Est. Fair Market Value: $2,330,500.	$ 2.3
		TOTAL LOUISVILLE & NASHVILLE		$ 2.3

	CARRIER	TIME FRAME	TRANSACTION	Estimated AMOUNT (Millions)
4.	Denver and Rio Grande Western RR	6/71-2/74	Special cash dividends to parent company, Rio Grande Industries, Inc. to provide cash for non-carrier activties Date — Amount 6/71 — $1.000 4/73 — 2.559 8/73 — 2.914 2/74 — 1.227 2/74 — .424 $8.124	$ 8.1
		1972	Management Fee assessed carrier with no benefit received from holding company	.6
		TOTAL DENVER AND RIO GRANDE WESTERN		$ 8.7
5.	Missouri-Kansas-Texas RR Co.	1969/1973	Katy Industries, Inc., parent holding company, used carrier net operating losses in consolidated Federal income tax returns without compensation to MKT RR	$ 37.8
		TOTAL M-K-T RR		$ 37.8

	CARRIER	TIME FRAME	TRANSACTION	Estimated AMOUNT (Millions)
6.	Chesapeake & Ohio Ry. Co.	6/73	Dividend (tax free) passed to parent, Chessie Systems, Inc.-consisted of common stock investment in 4 non-carrier sub-sidiaries.	$ 6.1
		1973	Cash Advances to parent	20.7
		1973	Cash Dividends to parent	14.3
		1973	Excess of market value over book value of real estate transferred from railroad and railroad subsidiaries to the newly formed holding company, Chessie System Inc., and to Chessie Resources Inc., a newly formed real estate development subsidiary of the holding company.	250.0
		TOTAL CHESAPEAKE & OHIO RY.		$ 291.1
7.	Kansas City Southern Ry. Company	1962/1968	Carriers paid parent, Kansas City Southern Industries $3.3 million more in allocated Federal income taxes than holding company paid IRS for years 1962 through 1968.	$ 3.3
		1973	Carrier and affiliated carriers assessed holding company expenses as management fees without receiving any benefit. Based on revenues.	1.3
		1967	Transfer of carrier invest-ments in subsidiary companies to Industries. Book value $20.6 million estimated market value:	45.4
		1967/1968	Investment in Howe Coal Co.	15.0
		TOTAL KANSAS CITY SOUTHERN		$ 65.0

	CARRIER	TIME FRAME	TRANSACTION	Estimated AMOUNT (Millions)
8.	Southern Pacific Transportation Co..	2/70	Dividend to holding company, Southern Pacific Company, (SPC) included 206,396 shares of SPC capital stock. Book value of $6,906,715 and a fair market value of $8.5 million.	$ 8.5
		6/71	Transfer of assets as a dividend consisted of 1.9 million acres of real estate, mineral rights on about 1.1 million acres, together with carrier holdings of common stock in non-railroad companies. Dividend recorded at book cost of $12.7 million, and	
		1/74	a special dividend transfer of about 90,000 acres of land and other assets and carrier investment in wholly-owned subsidiary. Recorded book value of dividend was $127,494,730. Estimated Fair Market Value of dividends of 6/71 and 1/74	500.0
		TOTAL SOUTHERN PACIFIC		$ 508.5

	CARRIER	TIME FRAME	TRANSACTION	Estimated AMOUNT (Millions)
9.	Union Pacific RR Co.	1969/1971	Cash advanced to Union Pacific Development Co. for capital needs.	$ 178.0
		6/71	Dividend to parent, Union Pacific Corporation, of carrier's investment in Union Pacific Development Co. Asset book value $372. million. Estimated market value:	975.0
		11/72	Dividend to parent of carrier's investment in common stocks. Book value $60.3 million. Est. Market	81.4
		TOTAL UNION PACIFIC		$ 1,234.4

	CARRIER	TIME FRAME	TRANSACTION	Estimated AMOUNT (Millions)
3.	Atchinson, Topeka and Santa Fe Ry. Co.	11/70	Dividend of 153,482 acres of land grant land and mineral rights to Santa Fe Industries, Inc., parent company. Land had no recorded book value. Estimated Fair Market Value	$ 300.0
		1970/1971	Dividend to holding company of carrier's investments in noncarrier subsidiaries recorded at a book cost of $20 million and land and other real property recorded at a book cost of $8.3 million. The affiliated companies, land and real property transferred had a net recorded value on a consolidated basis of:	219.0
		1970	Management fees and other holding company expenses charged to carrier with no benefit being received in return.	.9
		1973	Dividend to parent of carrier's (Santa Fe Trail Transportation Co., Former Subsidiary of Railroad Included in Dividend of 11/70) Investment in Santa Fe Terminal Service, Inc.	18.5
		TOTAL ATCHINSON, TOPEKA & SANTA FE		$ 538.4

Mr. BROWN. Thank you, Mr. Chairman.

Chairman Stafford, how serious a problem is this?

Mr. STAFFORD. At the time we first started making recommendations to the Congress that we should be given certain authorities to permit us to look into the conglomerate situation, I think we had only about 15 to 20 percent of all the railroads in conglomerate holding companies.

I would say that two-thirds or better of all the railroads, class 1 roads, are in holding companies now. Our concern, of course, is the draining of funds from the railroad to the holding company and the result; the deterioration of the railroad because of lack of funds. We recognize the financial reasons for development of a holding company. The railroads feel they must have diversification, into other forms of business that perhaps can supplement the income of the corporation.

Our problem comes when we are unable then to get to the figures of the holding company in order to make a better study.

Now, your committee and the committee of the Senate put together the rail legislation that directed us to make a study, a 1-year study, on this. From that study I report back to you.

Mr. BROWN. Chairman Stafford, you said that you needed authority to look into this matter.

Mr. STAFFORD. To go into the financial reports and all that. We generally have Mr. Grady here, but Director Grady is not here today. I have asked Mr. Berman from the same department to come along. He has been working in this area a great deal.

Might I ask Mr. Berman to speak to this matter?

Mr. BROWN. I have one more question which probably will help focus the issue.

The national transportation policy which the ICC is charged with implementing, calls for sound economic conditions in transportation. What is the Commission doing to alleviate the problems caused by conglomerate depleting of the assets of their railroad subsidiaries? Is the Commission taking any action to stop this?

Mr. STAFFORD. This fits in with what I was saying a second ago. We need this mechanism. We asked previously for the right to go into the records of the holding company. We need to see what is happening to these funds being drained off from the railroads. We felt that these funds possibly could be better used in the maintenance of the railroad system.

Does this fit in with my asking Mr. Berman to speak?

Mr. BROWN. I would like to ask you another question on that point. Specifically, how vigorous has the Commission employed its power under section 12(1) of the Interstate Commerce Act to "inquire and report on the management of the business of all carriers and to inquire into and report on the management of the business of persons controlled by or under common control with such carriers."

Mr. STAFFORD. I am sorry Mr. Grady is not here. Will Mr. Berman speak to that?

Mr. BERMAN. Mr. Brown, to my knowledge on the railroad holding companies we have not conducted any investigation under 12(1). The study that is now under consideration that we will go forward with, the proposal that has been sent forth would use the powers under

12(1) to the extent necessary to get whatever information we feel is required.

Mr. BROWN. Why hasn't the Commission conducted an investigation under 12(1) until the statutory language in the Railroad Revitalization and Regulatory Reform Act was written?

Mr. BERMAN. My tenure with the Commission is relatively short. I really can't speak to that question, Mr. Brown.

Mr. KNAPPEN. I would like to add to that, that the Commission has done a great deal in terms of learning about these transactions and that learning process was the basis for our legislative proposal on conglomerates.

We have also used that authority recently in the Commission report on the *Rock Island* case in which we imposed reporting requirements on the holding company of the Union Pacific.

Mr. STAFFORD. Might I add to that. I am reminded that that is the section under which we have been carrying on our investigation of the Kansas City Southern for the last 2 years or maybe longer. Mr Gould?

Mr. GOULD. Yes. That section of the act is the one we instituted on August 10 on Kansas City Southern and the relationship of that railroad to a number of other subsidiaries. The case involved a very complex and difficult, strongly contested attempt by the opposition to prevent the Commission from getting to see the records of the affiliated companies; so much so, that we have been in court for almost 2 years.

Mr. BROWN. Chairman Stafford, do these investigations include investigating the holding companies?

Mr. STAFFORD. Yes; and all the small companies that are under the umbrella. We have even had to go the route of subpenas, the whole bit, in order to try to get all this material.

Mr. BROWN. I draw your attention to the memorandum just submitted for the record which you have before you, this is the December 30, 1975, memorandum to Managing Director Robert L. Rebein from John Grady, Director of the Bureau of Accounts, subject: "Supplemental Information Requested by Congressional Oversight Committee."

Have you used any of your powers to investigate the holding companies listed here?

Mr. STAFFORD. Yes. The Kansas City Southern is one we have just been speaking of.

Mr. BROWN. Is that the only one?

Mr. STAFFORD. That is the major one. As we say, we really have been having a great deal of difficulty through the court process trying to get this study completed.

Mr. BROWN. Have you been challenged in the courts on this investigation?

Mr. GOULD. Indeed we have, Mr. Brown. It required that the Bureau of Enforcement go to the Commission to attempt to get subpenas to obtain the records. The Commission subpenas were then contested in the courts by the affiliated companies to whom they were directed, so much so that it went through the district court level and through the court of appeals.

We finally were sustained, and we are now in the process of examining those records.

Mr. BROWN. But you are pressing ahead?

Mr. GOULD. Yes.

Mr. CERRA. For example, with the Chesapeake & Ohio and their conglomerate, every time our auditors go in, we have the ground rules laid down to us, "Sorry, fellows, you can look at the railroad's books, but you can't look at the conglomerate's." Then we have to have the subpenas issued and enforced.

Mr. BROWN. Would you enumerate for the subcommittee the holding companies you have subpenaed for this material?

Mr. GOULD. The only one involved is the *Kansas City Southern* case; because of the contest in the courts opposing the subpenas, we have not pursued other companies as yet in the same manner.

There are other companies that are involved.

Mr. BROWN. I thought you stated you were pursuing other companies with the subpena?

Mr. GOULD. Not through the subpena.

Mr. BROWN. For example, the Union Pacific railroad seems to be the largest in here with $1,200 million of assets allegedly transferred from its transportation facilities.

Are you working on that?

Mr. STAFFORD. To the best of my recollection, Mr. Grady told me that we are using this as a pilot case. We want to see what authorities we really have and how far we really can go.

This is one of the reasons we asked for further authority, which we hope will make these records more easily attainable.

Mr. BROWN. How long have you been aware of this problem?

Mr. STAFFORD. Of the Kansas City Southern?

Mr. BROWN. No; this conglomerate asset transfer problem.

Mr. STAFFORD. You see, there is a great deal of difference of opinion as to the rights and wrongs in the entire question.

Mr. BROWN. But you do see the necessity for gathering this information?

Mr. STAFFORD. Yes.

Mr. BROWN. Why has not the Commission moved faster?

Mr. STAFFORD. We are now trying to break ground on this thing.

Mr. CERRA. One real reason is that we have had pending before the Congress for years conglomerate legislation which would give us the mechanism to do what we are trying to do now under the existing provisions of the act.

What we need is this mechanism to prevent the unwarranted flow of funds from the transportation company to the holding company and nothing in the way of finding out what the holding company is doing to aid the transportation company. We are just running into roadblocks everywhere we go.

Mr. Moss. Let me understand now. Do you intend to tell the committee that you are without adequate authority at this time to pursue the holding companies to determine the effect they are having upon the transportation companies, as a result of the division of assets?

Mr. CHANDLER. Mr. Chairman, I am John Chandler, planning coordinator for the Commission, on Chairman Stafford's staff.

I think the reason why the Commission has not more aggressively pursued these holding companies is simply that the railroads which they control are not in any trouble. There is no indication that the draw-off of funds from the Union Pacific Railroad by the holding

company has affected that railroad's ability to perform service adequately.

Mr. Moss. Is there any indication that if the draw-off by holding companies of Penn Central brought about the downfall of Penn Central?

Mr. STAFFORD. There were a lot of things that brought about the downfall.

Mr. Moss. It had a major impact, did it not?

Mr. CHANDLER. I don't think that is strictly true, Mr. Chairman, because in that situation the Penn Central Railroad, itself, was the company which owned the buildings. I don't mean to quibble about it because obviously they were using their funds for affiliated companies.

It was not exactly a holding company situation. Certainly that had an impact. There is no question about that. We think there were many, many other factors in there.

Mr. Moss. I raise the question because the counsel asked why the authority was not being used. I believe the response was that you had been waiting for years for the Congress to give you some additional authority.

Again, the question was put as to why the authority given you in the Railroad Reorganization and Regulatory Reform Act this year was not being more aggressively utilized.

Now you tell me it is because you have not found the companies—in this instance Union Pacific—to be in any difficulty. It is important that we check them before they get into difficulty if there is a holding company relationship where the siphoning off of the transportation company assets could have an impact further down the road on the transportation operation.

Mr. CHANDLER. Yes, sir, I think it is important. I would like to point out though that the Commission does get from the railroad already a substantial amount of information. We think we have a pretty good handle on what is going on.

Mr. Moss. You feel then that you have this whole matter of the conglomerate relationship under very tight and current control?

Mr. CHANDLER. No, sir, because even if we have the knowledge we don't have the authority to do anything about it. We don't have the authority to prevent the railroad holding companies from siphoning off its assets.

Mr. STAFFORD. The Katy Railroad is another carrier that is in trouble and is held by a holding company.

This is a railroad which has been losing money. The holding company is benefiting from losses by the railroad. In one of their annual reports just in the last 3 years—I think it was 2 or 3 years—the holding company announced to their stockholders that they saw no responsibility for plowing any money back into the railroad to maintain the tracks, or to do anything else of this kind. Yet, the holding company was benefiting by those losses to the tune—I would like to have a chance to straighten out the figures in case my memory fails me—of somewhere around $5 to $15 million a year.

Yet, in their annual report to their stockholders they were saying, "we see no responsibility to plow any money back into the railroad to help it in its hard time or to fix up the track which it needs badly."

Recently, there came a need for that railroad to have some additional funds to keep operating. They came before the U.S. Railway Associa-

tion, of which I am by law a member of the board, asking for a loan. We brought up this question of the fact that the holding company had some responsibility to the railroad.

So, before they would make the loan, the holding company had to make an agreement to abstain from that practice and to plow back the benefits that they had received.

Mr. Moss. Mr. Brown?

Mr. BROWN. Chairman Stafford, do you feel if you were able to investigate the nine additional holding companies, just the ones that are included in this memo, that you would have a better case for gaining authority, that you would then have a basis for stating exactly what the asset transfer effect is?

Mr. STAFFORD. I don't think so. I don't know that we would have a better chance of getting any authority.

Mr. O'NEAL. I just want to point out that under the Railroad Revitalization Act, we are going to undertake that examination of the rail conglomerates. I frankly feel that one reason the legislation has not moved is that many Members of Congress are not convinced that this is a serious problem and maybe we have been derelict in not shining the light on it a little bit more.

It seems to me that the Commission has made an effort under section 12(1); it has run into some difficulties. We have sought legislation, I believe the first bill was in about 1969. There are a lot of other things that have happened legislatively on the Hill and, of course, the thing has been put fairly low on the priority list.

I frankly feel that if we can do a good job next year under this section that we should be able to present a much more persuasive case to the Congress.

Mr. STAFFORD. Might I ask Mr. Brooks, who has been working in this area, to comment.

Mr. BROOKS. Mr. Chairman, I think we are talking about four distinct subject matters. The first is the power and obligation of the Commission to conduct the investigation. You read from section 12, paragraph 1 on that.

The second is the power of the Commission to do something about a situation after its investigation. That is what our conglomerate legislation is all about.

The third is the public policy in various parts of the law which promotes the creation of conglomerates in the first place. An example of that is the ability to use the consolidated tax return where the holding company will get benefits from a deficit operating carrier subsidiary.

The fourth is the general question of whether or not the conduct of the holding company is really wrong or contrary to the public inteerst.

Now, on the first point, the Commission ran into a snag because it could not get all the financial information it wanted from the holding company. It was barred by court decision from doing so. We have sought legislation which would give us the power to overcome the court decision. We would go in and see various financial and planning activities of the holding company which we are now barred from seeing.

On the second point——

Mr. BROWN. May I clarify this point? I thought Mr. Gould had stated that the Commission does have the authority, and Chairman Stafford said the Commission does have the authority to investigate.

Mr. STAFFORD. He is talking about planning and financial forecasting.

Mr. BROOKS. Certain parts of the holding companies' activities are barred from that. Mr. Gould has been able to obtain a subpena for specific information in specific cases but we don't have that overall authority to go in and find all the information we need from the holding company.

Mr. STAFFORD. You are talking about a specific item there, you see, planning and forecast. Mr. Gould is speaking of the actual movement of the funds, and what happened there.

Mr. BROOKS. On the conglomerate legislation that we have up here perennially for about 5 years, the Commission is simply asking for power to monitor the conduct of the holding companies with regard to drawing off assets of their carrier subsidiaries and to take action, to step in and take corrective action if such drawing off of assets has an impairing effect on the carrier's subsidiary.

The Commission feels that if it could get such legislation, first of all it would have a deterring effect and second, it would give us rectifying powers.

Mr. MOSS. Would it be helpful, do you think, for this committee to take one of the holding companies and go through it very carefully to get the answers that the Commission apparently has been unable to obtain?

We have the authority. We have the power to produce that information.

Mr. BROOKS. We have the Kansas City Southern investigation underway. You might use that as a sample. But the Commission has acquired a considerable amount of information about the drawing off of funds and the application of those funds outside the carrier structure.

In the case of the Illinois Central Gulf, for example, we now know some of those funds that were drawn off from the Illinois Central Railroad were used to set up a real estate subsidiary and in recent times some of the assets of their subsidiary have been used to sustain railroad activities.

So it has worked both ways in that case.

I don't know that you can take anyone and say this is typical of all. I really think the Commission needs this power it is asking for to monitor the whole thing and to take corrective action where some actions are taken by the holding company contrary to the public interest.

Mr. STAFFORD. Now, the Commission itself is not—this was not any unanimous vote by the Commission. There is a very strong school of thought that in a sense we are getting involved in the management rights of running their own business and that we should not go beyond this. That was a minority view, but a strong minority view at the time the Commission voted to go ahead with the legislative request.

Mr. BROWN. Mr. Chairman, I have just one more question.

Under the new act, the Railroad Revitalization and Regulatory Reform Act of 1976, section 903, you are asked to study this problem.

From what you have said today, what type of study and what will be the quality of the study, in your opinion, you will produce for the Congress?

Mr. STAFFORD. The staff group headed by Mr. Chandler has been putting together material within the last week or two toward beginning that study.

Mr. BROWN. Chairman Stafford, you have asserted that there are going to be some great difficulties in completing this study because you cannot obtain some of the necessary information. Congress would be interested in finding out what the difficulties are going to be so that it can assess the quality of the final report and assess, before hand, the potential suggestions or conclusions contained therein.

Mr. BERMAN. Mr. Brown, we plan to begin field work on that study this month. What we hope to gain that we have not had access to before is really the holding companies' side of this picture, exactly to what extent these assets have been used by the holding companies, what benefits the holding companies have gotten from them and to what extent the railroads have, in turn, benefited from the holding company, what benefits have flowed back.

Fairly shortly I think we will be able to supply you exactly with what information the railroads have been willing to give and the information they are reluctant to give up.

Mr. BROWN. May I ask, Mr. Chairman, that the Commission supply the subcommittee with its plan of action for conducting this study?

Mr. CHANDLER. That plan of action has been circulated to the Commission for its consideration. It is expected to be voted on early next week. At the same time the staff committee, of which Mr. Berman is a very active member, has requested the committee formally to institute an investigation under section 12 in case we do run into difficulties and have to go the subpena route to obtain the information.

We will be happy to provide you with a copy of the study.

Mr. Moss. The record will be held open to receive the study at this point.

[Testimony resumes on p. 346.]

[The following information was received for the record:]

PLAN OF ACTION FOR THE IMPLEMENTATION OF S. 2718— CONGLOMERATE STUDY

Attached hereto is the Commission's initial order in the Conglomerate Study. That order, along with its attachment, provides a summary of the issues that the Commission believes must be covered and of the type of information that the Commission must gather to resolve these issues.

FR

SERVICE DATE

MAR 19 1976

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION held at its office in Washington, D. C., on the 18th day of March 1976.

EX PARTE NO. 323

INVESTIGATION INTO THE MANAGEMENT, BUSINESS INTER-RELATIONSHIPS AND TRANSACTIONS OF THE BELOW-NAMED RAILROADS, THEIR CONTROLLING HOLDING COMPANIES AND AFFILIATED COMPANIES

The Commission, pursuant to Sec. 903, PL 94-210, effective February 5, 1976, is undertaking a study of conglomerates and of such other corporate structures as are presently found within the rail transportation industry and seeks to determine thereunder what effects, if any, such diverse structures have on effective transportation, on intermodal competition, on revenue levels, and on such other aspects of national transportation as may in the course of the study be found relevant. The Commission is required to submit a report thereon, with appropriate recommendations, within one year of the enactment of PL 94-210.

Issues to which this study is addressed include the effects that formation of conglomerates (diversified holding companies) has had on:

1. Railroad revenue generating assets and/or competitive strength, including the extent, purpose, and results of asset transfers and other transactions and contractual

arrangements between railroad operating companies and their controlling holding companies, affiliates and subsidiaries.

2. Railroads' financing practices, financial condition, level of maintenance and capital improvements, adequacy of service, intermodal competition and other costs/benefits to stockholders, creditors, shippers, and receivers.

3. The exercise of economic regulation by the Interstate Commerce Commission.

It is ordered, That pursuant to the provisions of the National Transportation Policy (49 U.S.C. preceding §1), Sections 12, 13, and 20 of the Interstate Commerce Act (49 U.S.C. §§12, 13, and 20), Section 2 of the Elkins Act (49 U.S.C. 42), and Sections 101 and 903 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801, 49 U.S.C. ___) an investigation be, and it is hereby, instituted upon the Commission's own motion into the management, business inter-relationships and transactions, financial, accounting and other practices of the below-mentioned carriers, with respect to their controlling holding companies and persons under common control with, and controlled by the carriers. As part of our study plan, it is suggested that respondents and other parties address themselves to the issues set forth in Attachment A.

It is further ordered, That the carriers and holding companies named following be, and they are hereby made, respondents in this proceeding.

Carrier	Holding Companies
Atchison, Topeka & Santa Fe Railway Company	Santa Fe Industries
Baltimore & Ohio Railroad Company) Chesapeake & Ohio Railway Company)	Chessie System
Bangor & Aroostook Railroad Company	Amoskeag Company
Boston & Maine Corporation	Bomaine Corporation
Chicago, Milwaukee, St. Paul & Pacific Railroad Company	Chicago Milwaukee Corp.
Denver and Rio Grande Western Railroad Company	Rio Grande Industries
Illinois Central Gulf Railroad Company	IC Industries
Kansas City Southern Railway Company	Kansas City Southern Industries Inc.
Missouri-Kansas-Texas Railroad Company	Katy Industries
Missouri Pacific Railroad Company	Mississippi River Corporation
Penn Central Transportation Company	Penn Central Company
Seaboard Coast Line Railroad Company	Seaboard Coast Line Industries, Inc.
Southern Pacific Transportation Company	Southern Pacific Company
Union Pacific Railroad	Union Pacific Corp.
Western Pacific Railroad Company	Western Pacific Industries, Inc.

It is further ordered, That respondents and other interested persons desiring to submit information, views, and other representations relevant to the matters hereunder study, as set forth in Sec. 903, PL 94-210, and as outlined in the issues above, may do so by filing an original and 15 copies thereof with the Interstate Commerce Commission, Office of Proceedings, Room 5342, Washington, D. C. 20423, on or before 60 days from the date of publication of this order in the Federal Register. To the extent feasible, all filings shall be submitted in three parts corresponding to the three issues outlined above. A fourth part may be used to include relevant information, views, or other representations which do not come within one of the three foregoing issues, providing a clear statement of the issue to which they are addressed is included.

And, it is further ordered, That a copy of this order be served on each respondent, that a copy be deposited in the Office of the Secretary of the Interstate Commerce Commission, Washington, D. C., for public inspection, and that statutory notice of the institution of this investigation be given to the general public by delivering a copy thereof to the Director, Office of the Federal Register for publication therein.

By the Commission.

ROBERT L. OSWALD

(SEAL) Secretary

CONGLOMERATE STUDY PLAN
ATTACHMENT A

PRIMARY ISSUES

1. What effect has the formation of diversified holding companies had on railroad revenue-generating assets and/or competitive strength?

    a. To what extent have assets been transferred between the railroad operating companies and their controlling holding companies, affiliates and subsidiaries?

    b. What was (were) the objective(s) in transferring the assets?

    c. What is (was) the nature of any other transactions and contractual relationships between the railroad operating companies and their controlling holding companies, affiliates and subsidiaries?

    d. What costs/benefits accrued to the railroads, holding companies, affiliates, shippers, and the general public as a result of the transfer?

2. What effect have holding company and other conglomerate structures had on the railroads in terms of:

    a. financing practices, including the influence of banks and other financial institutions;

    b. financial condition;

    c. level of maintenance and capital improvements;

    d. level of service;

    e. intermodal competition;

    f. other costs/benefits to stockholders, creditors, shippers, and receivers; and

    g. capabilities of railroad management.

3. What effects have conglomerate formations had on the I.C.C.'s ability to regulate the railroads?

Ex Parte No. 323

HOLDING COMPANY ADDRESSES

Santa Fe Industries
224 S. Michigan Avenue
Chicago, IL 60604

Chessie System
2 North Charles Street
Baltimore, MD 21201

Amoskeag Co.
Suite 4500
Prudential Center
Boston, MA 02199

Bomaine Corporation
2121 South Bundy Drive
Los Angeles, CA 90064

Chicago Milwaukee Corp.
516 West Jackson Blvd.
Chicago, IL 60606

Rio Grande Industries
1515 Arapahoe Street
Denver, CO 80202

IC Industries
One Illinois Center
111 East Wacker Drive
Chicago, IL 60601

Kansas City Southern Industries, Inc.
114 West 11th Street
Kansas City, MO 64105

Katy Industries
701 Commerce Street
Dallas, TX 75202

Mississippi River Corporation
9900 Clayton Road
St. Louis, MO 63124

Penn Central Company
3 Penn Center Plaza
Philadelphia, PA 19102

Seaboard Coast Line Industries, Inc.
500 Water Street
Jacksonville, FL 32202

Southern Pacific Company
65 Market Street
San Francisco, CA 94105

Union Pacific Corp
345 Park Avenue
New York, NY 10022

Western Pacific Industries, Inc.
400 Park Avenue
New York, NY 10022

Mr. Moss. Mr. Krueger, do you have any questions at this time?

Mr. KRUEGER. Yes; I do have some questions.

We have just been exploring the question of draining off the capital from the railroads to holding companies. I am wondering if there is anything specifically about the regulations as they now apply to the railroads that would make it more attractive for the holding companies to apply their capital in ventures other than in railroads.

Is it possible, for example, that the ICC or whoever has set a rate structure or a return on investment structure at a level lower in regard to railroads than, say, real estate or fast food items, or whatever this money is going off into, and if so, if we have this problem of undercapitalization of railroads because the capital is going into other areas, is there anything that the existing regulations and decisions might have had responsibility for in terms of these funds going into other areas?

Could we explore that?

Mr. STAFFORD. Yes; I will be happy to explore it with you.

In the first place, just to be sure we understand, you said that the ICC set the rates too low. We don't set rates. They file for a rate increase through their various bureaus. In fact, we have one before us at the moment from the railroads. So, it is not a question of our setting rates.

Mr. KRUEGER. It is a case then of your approving?

Mr. STAFFORD. It is really a case of what they can take and keep the traffic. This is the real problem that is involved. We find this true everyday.

We could go on to say that a railroad is entitled to a 10 percent rate of return on their investment. That is meaningless. It doesn't mean a thing because they have to compete. The competition is such that there is no way that they can retain the traffic if there is a competing carrier that is available and is willing to carry it for less.

Miss Rosenak handles all our rate matters for the Commission, all our tariffs.

Miss ROSENAK. As an illustration of what the chairman just said, we have a rail increase pending now, ex parte 318. In that case we authorized the carriers to go ahead and gave them special permission to publish this increase.

However, the Southern Pacific lines did not join. As a result when the actual implementing tariff was filed the whole western territory, all the railroads in the West, flagged out.

Mr. KRUEGER. What did they give as the reason for flagging out?

Miss ROSENAK. They would not take the increase, they would not join. They had originally come in and petitioned for it. They later came in and asked not to participate on the ground that they felt they could not take the increase if the Southern Pacific stayed out.

Now, we held oral argument in this case just Wednesday. The carriers testified there, the western lines, that they had a revenue need, that they had increased costs, but they felt there was no way they could take the increase where they were competitive with Southern Pacific.

Because of the problems involved, they postponed the increase for 15 days. They are going to look at the situation again. The western lines are going to try to come in with a partial increase over certain

portions of the territory where they feel Southern Pacific is not as much of a threat.

Mr. STAFFORD. The Southern Pacific serves the entire west coast. Heavy shipments of fruits and vegetables come from out there, and all the other railroads compete for this traffic.

They have had to flag out of most of this to stay in the business.

Mr. KRUEGER. One of the questions I would like to ask in connection with this—I am not trying to cut off any of the things that you feel are important to add—but I am wondering what kind of delays are involved in obtaining rate increases. I have encountered one estimate that there is very often a very long delay between the request for rate increase and the actual imposition of it.

I think it is the Association of American Railroads' report used by the Subcommittee on Transportation. It said over an 8-year period there was a $2.2 billion loss in revenues because of the delays in rate increase requests.

Mr. STAFFORD. I would like to make a comment or two and you can follow up on that. When the AAR says delay, what they really mean is that they expect to have the increase on the very day it is sought. Well, it is not possible to do that and still fulfill our duty to let interested shippers and consumers possible objections be heard.

Mr. KRUEGER. I am not really asking that. They have charged that the delay has cost them $2.2 billion in capital.

Mr. STAFFORD. You know, you can make figures say anything, I would only submit that it is possible to make figures say anything. It is true I think that there was a period of time when the Commission was not moving as quickly on rate matters. But I feel that since Miss Rosenak has become the Director, we have been moving very rapidly, and are still comporting with due process.

Mr. KRUEGER. How long has she been Director?

Miss ROSENAK. We feel right now there is very little regulatory lag in handling rate increases. We do have to give shippers a chance to have their input. But the increase before this one, for instance, ex parte 313, they came in and asked for an increase. We acted on it. Finally, it went into effect without suspension 30 days later.

Now, their figures I believe are overstated for several reasons. One, they include any delays at all, several months for instance of delay. One of the rate increases was caused by a price freeze, something we could do nothing about.

Second, it included any revenue they conceivably could have obtained. The revenue would be less because customarily they do not take the increase in all commodities and later there would be certain flag-outs.

We have made every effort to handle these cases as fast as we possibly can. We often let them go into effect subject only to investigation.

The only recent case where there was a delay was ex parte 310. In that case the situation was very uncertain because the Chessie was not participating. As a result the Commission did suspend it for a short period of time.

However, the railroad's own evidence showed that with the Chessie out in the East, just as in the western situation here, in fact the eastern railroads would not have realized any revenue during that period.

Subsequently, the Chessie did join the increase.

Mr. KRUEGER. Since figures can be used for most anything, as you said, Chairman Stafford, the Subcommittee on Transportation and Commerce of our parent Interstate and Foreign Commerce Committe, has asserted, based on the AAR estimate, that the cost of delay equals about a quarter of the tariff increases during the 1967 to 1975 period. Roughly, one quarter of it was lost.

I am wondering whether you think there is any validity at all to that notion of loss in that time? I never did hear quite when she became head of the bureau.

You became head when?

Miss ROSENAK. July 1974.

Mr. KRUEGER. Would it be your judgment that there were no such losses actually taking place during that time?

Mr. STAFFORD. It depends on what they call a loss, sir. In the first place, as Miss Rosenak pointed out, they file for 100 percent of what they are asking for, but we have historically found that they can only take about 80 percent of that sought. That is only 80 percent of the increase can be realized due to flag-outs.

In the second place, if you are talking about day one, then you are talking about denying due process to the users of the transportation. I am not particularly aware of the study, but I have no doubt that any study that the committee might do would be a very good study.

Mr. KRUEGER. I don't know that it necessarily holds that any study the committee does is good. That is very charitable of you.

Miss ROSENAK. Could we supply for the record our own analysis of these figures?

Mr. KRUEGER. Yes, it would be helpful.

[Testimony resumes on p. 356.]

[The following information was received for the record:]

An Analysis of Whether Regulatory Lag Causes Lost Revenues in General Freight Rate Increases

COST OF TIME LAG - AAR STATISTICS

The Commission strongly disagrees with both the underlying premise and the methodology utilized by the Association of American Railroads in its attempt to quantify the effect of regulatory lag on general rate increases. A table prepared by the AAR, entitled "Cost of Time-Lag, 1967-1975," shows a total loss of $2,226 million occasioned by regulatory lag.[1] Our principal objection to the figures derived from the study lies in the apparent assumption that a general rate increase, applicable to substantially all of the Nation's rail traffic, could reasonably be expected to be implemented on the date on which the petition is first filed.

Under the Interstate Commerce Act, rate increases are normally required to be filed on not less than 30 days' notice in order to allow the public adequate time to protest and to permit the Commission to evaluate fully the lawfulness of proposed rate changes. Under exceptional circumstances, a carrier may receive authority to file a tariff change on less than statutory notice. In view of the complexity of general increase tariffs and their broad geographical impact, a filing on less than statutory notice would clearly be inappropriate in a rail general increase proceeding. In motor carrier increases, for example, special procedures promulgated in MC-82, New Procedures in Motor Carrier Revenue Proceedings, 351 I.C.C. 1, 340 I.C.C. 1 and 339 I.C.C. 324, require publication of an effective date 45 days later than the date of filing (See 49 C.F.R. § 1104). Rules considered in Ex Parte No. 290, Procedures Governing Rail General Increase Proceedings, 351 I.C.C. 544, would require a similar time frame to enable proper evaluation of the evidence

[1] See Pages 1-3 of the report "Materials Concerning the Effects of Government Regulation on Railroads and an Economic Profile of Railroads in the United States", December, 1975, prepared by the Staff for the use of the Subcommittee on Transportation and Commerce.

presented. Accordingly, AAR's statistics calculating regulatory lag from the date the petition is filed appear misleading and inappropriate. If normal statutory notice is used as a base, the "cost" would be reduced by an estimated $650 million from the amount computed by AAR. Similarly, computation of the "cost of regulatory lag" based on 45 day's notice would reduce the estimate by $1 billion or approximately 50 percent.

It should be stressed that the Commission has a duty to protect the public interest, a factor the AAR has ignored in its assumption that a general increase should be approved on the very date it is filed. The Commission has made every effort, however, to expedite the handling of general increase cases. Special procedures were promulgated in 1970, and more detailed requirements have recently been adopted in Ex Parte No. 290, supra. Prescription of these new procedures governing submission of evidence in general rate increase cases should facilitate disposition of these proceedings and minimize the time lag between filing and disposition of the case.

The AAR figures also appear misleading in that they intimate that the regulatory delays can be ascribed to the Commission alone, when, in reality, they are attributable to a number of factors beyond our control, frequently the actions of the carriers themselves.

Prior to 1970, the railroads were not required to file their evidentiary case until after the submission of their petition in general increase proceedings. Consequently, we could not fully investigate the carriers' revenue needs until some time after the filing

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[2] In many of the increase proceedings described in the study, the "regulatory lag" is substantially shorter than what the U.S. Railway Association describes as "petition lag". Considering the Commission's responsibility to protect a multitude of interests, this relationship between "petition lag" and "regulatory lag" assumes major importance.

of a petition. This led to some unavoidable delay in general revenue proceedings prior to Ex Parte No. 281. Additional delays have often been occasioned by the filing of carrier requests to amend or modify the original petition. In Ex Parte No. 256, for example, the original petitions were filed on May 18, 1967, and May 19, 1967. An order instituting an investigation and directing the filing of verified statements by June 2, 1967, was entered on May 19, 1967. Subsequently, however, the railroads filed four separate petitions to amend, the latest on June 19, 1967. Similar developments occurred in Ex Parte No. 259 as well as other proceedings. Actions of this nature by the railroads have certainly contributed to the time lag in increase cases.

In Ex Parte No. 265, the railroad petitions were filed on March 3, 1970 and March 12, 1970 (as amended by petition filed March 17, 1970). After the receipt of numerous statements and briefs, and the holding of oral argument in May, 1970, the railroads were granted an interim increase, effective June 9, 1970. Further proceedings were held (in which over 100 statements were received), but, before the Commission could act to bring the matter to conclusion, the railroads filed another petition for a general increase, which resulted in the institution of Ex Parte No. 267. While the effect of this development is difficult to quantify, the Commission's final report would in all likelihood have been issued at least two months earlier, had the railroads postponed the filing of the Ex Parte No. 267 increase.

In Ex Parte No. 295, a petition was filed on April 20, 1973 (subsequently amended on May 9, 1973), on behalf of the Nation's major railroads except the Chessie System and the Long Island Rail Road. After the filing of approximately 230 statements

and replies, on June 11, 1973, the railroads were permitted to file the tariff on statutory notice. On June 29, 1973, they filed their tariff with an effective date of July 29, 1973. The Chessie System joined in the application of the increase, but the tariff could not take effect until August 13, 1973 because a price freeze was then in effect. Again, the carriers did not take into account delays caused by factors outside Commission control.

The AAR tabulation lists Ex Parte No. 305 as a major source of revenue loss for the carriers. This results, however, from the magnitude of the proposed increase (10 percent), rather than delays occasioned by Commission action or inaction. The increase, in fact, was implemented in full only two months after the date the petition was filed. This, we submit, is not unreasonable under the circumstances of that proceeding. While the railroads sought a 10-percent general increase in Ex Parte No. 305, they justified an increase of only 3 percent on a cost basis, alleging that the remainder was necessary for improving their facilities. Accordingly, we ultimately authorized the entire increase, but required 7 percent of the revenues derived to be used for deferred maintenance and delayed capital expenditures. The authority of the Commission to impose these restrictions was challenged in court by one carrier, and the matter is presently pending before the Supreme Court.

The delays in authorizing general rate increases are frequently attributable to the non-participation of a major carrier or group of carriers. In Ex Parte No. 310, for instance, the Long Island Rail Road and the Chessie System Lines were not parties to the increase originally sought. In view of the non-participation of the Chessie, the

Commission anticipated major problems in both the disruption of port relationships and the overall revenue yield of the increase. In response to a Commission inquiry, the carriers stated that

> " ... it is the judgment of traffic officials of Eastern railroads that without participation of the Chessie lines there could be virtually no implementation of the proposed rate increase. It follows that the potential yield of the increases to Southern and Western lines would be reduced at least by the percentage represented by the proportions of their freight revenues that are derived from interterritorial traffic to and from Eastern Territory. Thus the ratios of revenue yield to freight service revenue shown in Table II in V.S. 1 as 6.4 percent for the Eastern roads, 5.1 percent for railroads in the South and 5.8 percent in the West would be reduced to a virtual zero in the Eastern District, 3.4 percent in the Southern District and 4.3 percent in the West" (Emphasis added). [3]

Additional problems were present in Ex Parte No. 310 with respect to the diversion which might occur as a result of the increase. After thorough and detailed consideration, the Commission authorized a 7-percent increase, not applicable to export-import traffic and subject to several exceptions and holddowns. Subsequently, the Chessie became a party to the general increase, and the railroads filed a petition for reconsideration with respect to the exceptions and holddowns. Similarly, several shippers filed petitions seeking additional exceptions and holddowns. In their petition, the railroads showed that the potential diversion would probably not be as severe as the Commission had anticipated, and they expressed a willingness to take corrective action if substantial diversion did in fact occur. Because of the joinder of the Chessie in the

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[3] Page 10 of the "Railroads' Response to the Fifth Ordering Paragraph of the Commission's Order of November 27, 1974, Concerning the Apparent Non-Participation of Certain Roads," filed December 20, 1974.

increase, we found that there was no longer any necessity to except export-import traffic from the approved increase. By order served Junr 24, 1975, implementation of the increase was authorized on most traffic for which the increase was sought.

The effect of the non-participation of a substantial number of major railroads is illustrated by the problems which have arisen in the Ex Parte No. 318 increase currently pending before the Commission. In this proceeding, the Southern Pacific Transportation Company and affiliated railroads originally declined to participate in the increase sought. While the original proposal was under consideration by the Commission, a new tariff supplement was filed excepting the entire Western Territory from the application of the increase. This filing represented a major change, and oral argument was promptly scheduled. At the argument, the Western carriers indicated that they might be able to apply the increases to some movements in the West, but that they would require additional time. In view of the uncertainty created by the non-application of the increase to the Western Territory, the Eastern and Southern carriers agreed to postpone the effective date of the tariff to March 21, 1976.

Thus, the AAR statistics in our view often fail to identify the actual cause of the delay in authorizing general increases. In addition, it should be noted that the carriers frequently decline to implement the full increases authorized. The railroads admit that there have been "many instances where the increases have been removed as to certain traffic after the master tariff has been filed."[4] It is difficult to measure the amounts

[4] Railroads' statement of December 20, 1974, supra, at p. 7.

by which anticipated revenues authorized exceed actual revenues obtained.[5] However, in Ex Parte No. 265 and Ex Parte No. 267, 339 I.C.C. 125, 177 (1971), respondents testified that increased revenues actually obtained from preceding general increases were considerably less than those theoretically possible under the increases allowed. The revenue losses attributed to the Commission should be appropriately reduced to reflect actual rather than authorized increases.

In sum, delays in implementing major rate increases can result from any one of numerous factors. Some delay would appear to be unavoidable if the public interest is to be protected. On the other hand, the Commission is constantly striving to improve its handling of these proceedings, and the cost of delays attributable to regulation is in actuality much lower than indicated in the AAR figures.

Lastly, two more points should be reiterated. First, we believe it is unreasonable for the railroad industry to haggle among themselves for months about general rate increases, and then expect the Commission to grant these increases immediately and without question. Our duty to protect the public interest cannot be disregarded. Second, revenues are not truly "lost" to the railroads because of any regulatory delays. Instead, the revenue need is made up when the next general revenue increase is filed with the Commission.

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5. Pursuant to regulations adopted on October 4, 1975, in Ex Parte No. 290 (Sub-No. 1), Procedures Governing Rail Carrier General Increase Proceedings, the carriers are now required to submit data and information relating to the last general increase proceeding. This should facilitate quantification of these types of statistics.

Mr. O'Neal. I think it is important to put this question in some perspective. There is a claim by the railroads certainly that the Commission is not moving fast enough in granting rate increases.

There is an equal claim by the shippers that we are moving much too fast.

I think unless you eliminate totally regulations of railroad freight rates you are going to have to have some delay in order to allow those who pay the rates some opportunity to come in and give the Commission their view of those rates. That is the price you pay.

The fact that the carriers may lose or claim to lose a certain amount of money as a result of delay does not necessarily mean that they don't make up some of that money in subsequent rate increases.

I am not sure whether those figures account for those subsequent figures or not, subsequent increases.

Also, it assumes that everything the carrier asks for is justified. Obviously they tell the Congress, you know, they never ask for anything they don't need. We don't find that to be true in every case.

I think we have an obligation under this act to make sure, at least the best we can, that the revenue need they are claiming is in fact revenue need.

I think another question here, and I think you have asked the classic question about whether conglomerate control makes any sense, we really should be making a study of whether railroads can't improve their rate of return in some way.

I would only suggest that the condition of the railroads is not uniformly bad nor uniformly good and that some railroads that do not have conglomerate activities, are not involved in such activities, are doing exceptionally well.

One of those, of course, is the Southern Railroad which in the last 2 years, during the period of some pretty difficult times, has had a couple of its best years in its history.

So I don't think that you can say that necessarily that regulation has created the disinvestment which has resulted in the conglomerate phenomena.

Mr. Kreuger. May we perhaps explore what it is that has prompted the conglomerates to draw off this capital from the investment in railroads and try to ascertain why they should have elected to put it in other areas?

Mr. Stafford. The first reason in my judgment is their stockholders. Their stockholders want to realize a bigger return on their investment.

Second, a railroad is limited by competition because if they raise their rates too high to get a larger income, they are going to lose the traffic.

Third, in order to try to appease their stockholders, and it is a understandable and proper reason, they try to move into other areas where there might be a greater rate of return on an investment. For instance, they might get into various kinds of pipeline business. Actually, they are into all kinds of businesses; some of which are good and some of which are not so good.

Mr. Krueger. Is there anything in your judgment inherent about railroads in the last 20 years that would make them poor sources of return or is it that their time is passing, that the trucks are the coming mode?

We still presumably when we have some sort of market society need to ascertain what it is that we need to do I should think. We may well consider some of the big questions as well as the lesser ones. I think it is the general American preception today that railroads have not been among the most vital areas of our economy.

Mr. O'NEAL. That is accurate in the sense that that is the perception that the people have. I am not sure that it reflects the facts in all cases. I think it is important here to keep in mind what the chairman has mentioned, the competitive factor.

You are right, we should take a global view of this, why has this affected competition? One reason certainly is the tremendous interstate highway system that now exists throughout the entire United States and the motor carriers have become exceptionally competitive with the railroads. The U.S. Government has not, at least until the Railroad Revitalization Act, found it necessary or good public policy to give the railroads a similar kind of relief. There may be questions whether this act does it either.

I think another thing to keep in mind is that the railroads inevitably will not return as much as they could because they are affected by public interest considerations. The Government of this country and I think most countries feels that the railroads provide a public service and as long as they provide that public service, there are going to be certain limitations imposed on them.

The problem is in the conglomerate activities areas the railroads seem to want it both ways. They would like to take advantage of the large cash flow that is generated by the public service entity, the railroad, and use it to invest in more attractive areas, at least those railroads that maybe aren't doing as well as others.

We found, when I was with the Senate Commerce Committee staff, that while the return perceived frequently from investment in conglomerates seems to be very good, often that return is much less than it appears and often it is nothing more than a paper return of some kind.

So, you have a lot of factors working here. One of them is the need of the management to show day-to-day, yearly returns on the whole effort, the whole business effort, they are engaged in. Sometimes that means that the return is somewhat illusory.

I think this has been true in the Penn Central case. The investments in real estate did not pan out although on paper they looked beautiful; there wasn't anything there.

I think there are a lot of questions. You can't really say that they are doing that for sure in these other investments. Maybe they are. Maybe there are a lot of reasons why they are trying these other activities.

Mr. STAFFORD. Regarding Penn Central going into real estate——

Mr. Moss. And airplane rentals?

Mr. STAFFORD. I was not going to speak to the rentals. You will recall we had a turndown in the economy at that time. They were planning pretty thin as it was. We did have a rather decisive turndown for a year there that caught them right at the time they were at the fence.

Mr. Moss. If the gentleman will yield. Isn't it a case of also being rather a shaky marriage from the beginning?

Mr. STAFFORD. Absolutely. It never really was a consummated marriage.

Mr. KRUEGER. I remember a few other things about the Penn Central matter which did not involve marriages but involved perhaps girlfriends, as I recall.

Mr. Chairman, I have more that I should like to ask but you have been most generous. If you care to proceed awhile, I shall sit and listen.

Mr. Moss. The gentleman may continue.

Mr. KRUEGER. Fine.

While considering matters of potential competitiveness of the various railroads, one with another and with trucking, is it your suggestion, Commissioner O'Neal, that perhaps we have given benefits either to the interstate highway system or else through the subsidization of airlines which we have done in the way we have treated airports and some subsidies through mail and so forth, that other areas of our transportation system have received greater benefits in recent years, say, than the railroads?

This is not a leading question. It is simply one of curiosity.

Mr. O'NEAL. Yes, I think that is true. At least, certainly in recent years, I think every year we spend—the Federal Government and State governments combined—something like $20 billion on highways. That is a whole lot of money. You can't find any number like that that goes into the railroads.

Certainly I don't think that we should write out a check to the management of the railroads and say, "Here, you go out and spend this the way you want." That would not be proper.

But I think there are ways of infusing some funds into the rail area. This legislation just passed attempts to do that.

Mr. STAFFORD. May I add to that or supplement?

That goes both ways, of course. I recognize the argument that we put an awful lot of money into highways. Of course, highway users say, "Yes, but that is all our money through the various taxes that we paid." Then, of course, the argument is made that on a great number of those roads, the Federal Government gave the right of way to start with, plus an awful lot of extra area to develop. It includes much expensive property, with valuable mining and oil reserves.

But really, railroads are more and more becoming specialty carriers. They are not general freight carriers, as such, anymore, and the shippers are making them this way. They are shipping coal, grain, lumber, and other bulk items of this kind.

This is really their big business. The only really high rated business left, in my judgment, are automobiles.

However, waterways become the rails' major competitor when you get into bulk shipments. I notice by far more grain has been shipped to the gulf from the Midwest by water in the last quarter than by rail. You have this kind of situation all over.

It is the bulk items going by the slower barge lines down the various riverways. Of course, the Federal Government in some ways helps the water carriers, too.

I recall in those years when we were arguing that question up here on the Hill, we were talking about flood control and soil erosion. Very little talk at that time was about the benefit to water carriers, which was a so-called side benefit.

Actually, the money that the Federal Government spent on the dams, to help maintain an even flow of water, is very useful for recreational activities.

I guess when you get into the question of whether the Congress is doing wrong by any one form of transportation, it becomes quite an arguable item, no matter where you are on that question.

Mr. KRUEGER. In connection with this, I am trying to recall the percentage of freight that is moved by rail in this country. It is a decreasing percentage but nevertheless a majority one?

Mr. OLSON. Thirty-eight percent of the ton-miles go by rail.

Mr. KRUEGER. Compared with what?

Mr. OLSON. I don't recall the rest.

Mr. STAFFORD. Could we supply that for the record?

Mr. Moss. Would you like to hold the record open at this point to receive it?

Mr. KRUEGER. Yes.

[The following information was received for the record:]

PERCENTAGE BREAKDOWN OF THE AMOUNTS OF FREIGHT TRANSPORTED BY EACH MODE IN TON MILES

Question: What is the railroads' share of the transportation market compared to each of the other modes?

Answer: Based on 1974 data, the latest available in complete form, the revenue ton-miles generated by railroads (excluding express and mail traffic) represented 38.87 percent of the total domestic revenue ton-miles generated by all modes. Details are shown in the table below:

Market Shares: Intercity Revenue Ton-miles, Public and Private, by Mode of Transportation, 1974*

Mode of Transportation	Ton-miles(millions)	Percent of Grand Total
1. Railroads and electric railways, excluding express and mail	860,200	38.87
2. Motor vehicles	495,000	22.37
3. Inland waterways, including Great Lakes	348,000	15.72
4. Pipelines	506,000	22.86
5. Airways (domestic revenue service) including express and mail	3,912	0.18
Grand Total	2,213,112	100.00

* Preliminary data.

Sources(numbers below same as items in table):

1. Reports to the Interstate Commerce Commission (ICC).
2. Bureau of Domestic Commerce, Department of Commerce.
3. Report by the Corps of Engineers, Department of the Army. Only ton-miles in domestic waters are included.
4. Estimated by using reports to the ICC.
5. Based on statistics obtained from the Civil Aeronautics Board.

Bureau of Economics
March 15, 1976

Mr. STAFFORD. You mean you want the other forms?

Mr. KRUEGER. Yes.

Mr. STAFFORD. Now you do have the two forms of measurement your ton-mile and your value.

Mr. Moss. The ton-mile would be more appropriate.

Mr. KRUEGER. While we are trying to think in terms of this general area of how the railway can be economical or it should be, I suppose some people may argue it is like the wagon, it may have passed its prime purpose, something like that, but if indeed it should be presently economical, are there either just habits and practices followed by the railways or else perhaps regulations that you are in some way responsible for that might encourage a lack of new investment?

I don't know who is responsible for this, maybe the railroads themselves, other than ICC. It is my understanding that railway cars after transporting to a particular point can be used by the line at the far end perhaps for some period of time before they are returned.

In the old days I don't know what the rental was, it was $5 per car a day, something like that, but the rental figure was perhaps so low that it did not encourage investment in their own rolling stock because the people could roll them around on their own lines without returning them to the actual owner.

I wonder if someone can inform me a bit on some of these problems?

Mr. STAFFORD. I don't know whether the $5 that you are speaking of is the right figure or not. However, if all the railroads in this country had enough equipment—rail cars of various types—to serve their own needs, then you would have, generally speaking, almost a free flow of cars, and not experience difficulties.

Railroads, generally, in the South and in the West own enough cars to meet their needs adequately. However, the Eastern roads are deficient; that is, the least affluent Eastern roads are deficient. You are compounding their troubles when you run that car over to them, because they cannot even afford to pay the rental, on those cars.

Actually, under proper use, the figures that we have worked out as a charge on use of them should pay off the investment in the cars. I would like Mr. Tom Byrne to speak on that. Mr. Byrne has been working with railroad cars a great deal.

Mr. BYRNE. Mr. Congressman, at the present time the per day rates of the car rentals you refer to are based on the actual value of the cars less depreciation and of course the number of years they have been in service.

The owner's return is on a per day or daily basis plus a mileage rate for the miles traveled over the foreign line road. At the present time some feel that the rates are inadequate to encourage further acquisitions of cars.

In other words, they are a poor investment based on the basic per diem rate. The Commission has established what they call an incentive per diem rate or an increased per diem rate on the type of cars that were found in short supply, your common boxcar and lately what we call the excess car or the car especially conditioned for the transportation of food and food products.

The ownership of that type of car has been found deficient to take care of the food industry's demands and the Commission did place an incentive per diem rate on top of the basic per diem rate as a

further incentive to encourage the acquisition of cars and make it profitable for the car owner to own more cars and still be used on someone else's line.

Mr. KRUEGER. Mr. Byrne, in connection with that, is the rate set by the ICC and, secondly, is the rate set now just at initial cost for the car or at the replacement cost?

I assume that railroad cars are like most things we are accepting an increasing rate of cost on them and it might not be helpful for someone to have a 5-year-old car if the new car value has doubled in the interim.

Mr. BYRNE. Replacement cost is taken into consideration.

Mr. KRUEGER. The rate is set by the ICC?

Mr. BYRNE. It is set by the Association of American Railroads. The ICC then would approve. They did hold hearings and allowed each railroad to have their say and then they approved the rate as presented to them by the railroad industry.

Mr. KRUEGER. What are we doing when railroad cars, for example, get off into Mexico, in order to get them back? Is the ICC doing anything to recover these cars that are running around on Mexican railways?

Mr. STAFFORD. May I speak to that. I have been to Mexico on the question. We used to have a great deal of trouble in this area. The fact is that we were having difficulty from time to time getting Mexican railroads to pick up loaded cars, for instance, in the area of Laredo, Nuevo Laredo, to take on into Mexico.

It even got so bad 2 or 3 years ago that we had 5,000 or 7,000 cars, loaded cars, in the Nuevo Laredo area. Many of them had foodstuffs on them. It got to the point where we had to embargo all shipments into Mexico. Thereafter, the State Department got involved in it with me, and we managed to get it worked out by having a number of railroads go in and retrieve the cars.

Then the AAR came to me and said, "We have so many thousand cars in Mexico and we are not getting them back." This was taken up with the Mexican Government and the Mexican railroad officials. We came to an agreement whereby for every 100 cars that went in, they would send back 150, I believe it was, until we got caught up.

This worked well for a while and then it began to tail off again. Eventually, I think they began to get enough equipment. They are still buying power equipment. The Santa Fe, MoPac and Southern Pacific loaned, I believe, 75 power units to the Mexican Government to use in helping them move their cars.

As a result, they did begin to get the thing straightened out.

Actually, we are at a pretty good balance right now, at least, the last time I checked. The fact is that the Mexican railroad people were all up here just about a month ago and we met with them then. We found everything pretty well in balance.

Mr. KRUEGER. Do you have sufficient authority at the ICC to prevent the recurrence of this sort of thing or is there any legislation that is required?

Mr. STAFFORD. I don't know whether you can "prevent" recurrences. Yes, we think we have enough power to straighten it out because the Mexican Government has a very fine group right now operating their railroads. We really don't see any major problems. They

are upgrading their tracks. They were up here to borrow more money from the International Bank, I believe it was, in order to finance even more power equipment.

I must admit I have not talked to the AAR recently about the computer printout on the number of cars that are in Mexico, but the amount of business is growing so much with Mexico, rail business back and forth, that it is natural you are going to have a large number of cars in Mexico.

But there is not nearly the number of boxcars that used to be turned into homes along the tracks and things of this kind as there used to be.

Mr. KRUEGER. I am sure that is very comforting.

You referred earlier, Chairman Stafford, to the healthy Southern and Western railroads and the infirmity of the Eastern railroads. I am so accustomed to hearing about the eastern establishment that I wonder what it is that has brought health to the Southern railroads, I believe the Norfolk and Western is considered among the healthy railroad.

What is it that they have done?

Mr. STAFFORD. Actually, the Chessie is a very healthy railroad and it operates in the East here. The real problem has been developing for quite some time. A lot of it has been poor management, particularly in the merger of Penn-Central.

A lot of it is just a basic change in traffic pattern away from the eastern quadrant shortly before World War II, heavy manufacturing began moving to the South and to the Midwest in order to utilize more abundant labor. They also had various other reasons for their shift.

The overall cost appeared to be less in the South and in the West. Additionally, much of this heavy manufacturing had given the railroads a two-way haul, that is, fuel, coal, and other raw materials going into the plant, and manufactured items coming out of the plant. The movement of industry out of the East, then, reduced the two-way haul. The East then developed a more sophisticated type of industry.

Mr. KRUEGER. There is still an Eastern establishment although we are less sophisticated in the South.

Mr. STAFFORD. I am talking about electrical manufacturing, for instance. The Boston area manufactures much electrical components materials, but it all moves by truck. It is not something that is susceptible to movement by rail. This is the basic thing that started happening to them, also, short hauls between the expanding large cities in the East increased the labor cost so tremendously that it became better to put it on a truck between the cities.

Mr. KRUEGER. I would like to put to the panel at this point whether it is correct that you have some sort of early warning system to alert the ICC about cases of possible bankruptcy?

Mr. STAFFORD. Yes, we do have an early warning system.

Mr. KRUEGER. It came about presumably as a result of Penn Central?

Mr. STAFFORD. Right.

Mr. KRUEGER. Do you think that the system works effectively and would there be any advantage to that information being made available to the Congress—judging from all of the shifting of the chairs I see before me I think it is an uncomfortable question.

But I wonder whether this would be something you consider advantageous or disadvantageous for the railroads for us to know these things.

Mr. STAFFORD. We went through the basic thinking that you are presenting to us in the form of this question. Yes, we did know that the Penn Central was having some very real difficult financial problems at that time. However, at what point do you make it public by coming to the Congress and saying this is what is happening. Immediately, the funds are shut off——

Mr. Moss. Would the gentleman yield?

Mr. KRUEGER. I yield to the chairman.

Mr. Moss. The chairman is making a mistake that is made far too often downtown. Coming to the Congress does not mean going public. Contrary to the frequent assertions in the press, the Congress is a much more reliable body concerning keeping information to itself than the executive or the independent agencies.

In my 16 years as chairman of the information subcommittee I made some very thorough and in-depth studies of the records of the respective branches of Government and the Congress comes out remarkably well.

Mr. STAFFORD. May I withdraw my statement?

Mr. Moss. The Subcommittee on Oversight and Investigations has some judgment and we have rather a large constituency.

Mr. STAFFORD. I agree. May I withdraw that statement?

The question then became at that time what do we do with this? We know they are on their last legs. We knew this a month or so before. It was grinding down pretty much, although they kept assuring us that they had ways to work it out.

So, as a result of that, Mr. Grady, our Director of the Bureau of Accounts, started this program of studying the financial wellbeing of all these carriers. We now do it for not only rails but for the 100 largest trucking companies as well.

What this does, among other things, is to give us an opportunity to see bad trends starting financially. We immediately put our auditors into the shop, and audit once a month. If it continues to get worse, we audit their finances every other week.

Finally, as with the REA, we had them in every day, following every cash transaction to be sure of the whole thing.

So, this gives us an opportunity to stay on top of it. I am sorry Mr. Grady is not here today, he is ill. But I will be happy again to have Mr. Berman speak to that.

Mr. MCCORMICK. My name is William McCormick. I am Chief of the Section of Financial Analysis which has the prime responsibility for the early warning program. I could speak on this at some length.

If you would ask me another question, I would appreciate it.

Mr. KRUEGER. Perhaps one question I might ask, Mr. McCormick, is, since it is my understanding that this early warning system has been in operation since something like 1972, I wonder whether in your judgment it has prevented any bankruptcy in that time or how well has it performed, and can you give us a sense of whether or not you are satisfied with the operation of the system and what it has done for the people of the country, and finally, do you think in your judgment it would be helpful for the Congress in drafting legislation or in terms of bailing out others who have gone bankrupt, which we

are periodically asked to do, be provided with some advanced warning of perhaps whom we are likely to be asked to bail out.

Mr. McCormick. Mr. Krueger, I don't believe it is possible to prevent a bankruptcy necessarily by a financial monitoring system. It is very effective in keeping the Commission, and the Congress, in my opinion should also share in this, informed as to where the problem areas lie.

I think that it would be impossible for us to be surprised by any financial crisis in the railroad industry. Really, the railroad is the most vital, more so than motor carriers, although as the chairman said, we are delving into the larger motor carriers too, but the rail industry having some 67 class I railroads and the nature of the things they haul and being in some instances in some areas a sick industry, it becomes more important.

We feel, yes, it has been effective, that we have a very sensitive system that raises red flags whenever it appears that a downward trend is occurring and then we go in and analyze that more carefully.

We look into the financial situation. We look into the economic situation. We look into the physical situation of the roads.

Mr. Brooks. Mr. Krueger, may I add to that? This information adds to the Commission's expertise and aids it in carrying out certain of its designated functions. For example, we are continually dealing with financial transactions, the issuances of securities, notes, bonds, and so on. If one of the sick carriers comes to the Commission, as it is very likely to do when it is in difficulty, to have the Commission pass upon a proposed securities issue, the Commission has the benefit of the expertise resulting from the early warning system information.

A good example is the case of the Rock Island when it was tottering before going into reorganization. The Commission was alert to that situation and began its planning for a possible takeover by other railroads under section 1, paragraph 16(b), where the Commission is empowered to direct other railroads to move in and continue the operations of a defunct or shut-down road.

Even after the Rock Island went into reorganization, we continued to monitor their situation so that we could alter our contingency plans according to the needs of the factual situation of the Rock Island.

Thank you.

Mr. Krueger. Thank you.

Another question would be how does the cost of rail shipment in the United States compare with the cost of rail shipment in certain other countries where it is my impression they have probably done more to keep putting new funds into their railways.

I am thinking of Japan. I realize Japan is a very different country geographically. Much smaller. Also, I am thinking of some of the European countries. I know by and large we have cheaper fuel for our railways to use. At least we have the cheaper fuel in the country and I assume it is cheaper for railroads as well.

How does the cost compare in the United States per ton-mile with some European countries and the Japanese? Do we have those figures?

Mr. Stafford. I am not sure we have any. We will try to find them for the record.

Mr. CERRA. Mr. Krueger, there are some published figures which would show that the cost of transportation in the United States is lower than in other countries.

Mr. KRUEGER. If you could supply them for the record, I would appreciate it.

[The following table was received for the record:]

Summary
Selected Statistics - 1973
Railroads

	United States Class I Class I a	Canadian Pacific Limited	British Railways	French National Railways	German Federal Railways	Italian State Railways	Japanese National Railways	South African Railways
Revenues (Millions):								
Railway Operating Revenues:								
Freight	$ 13,771	$ 692	$ 456	$ 1,488	$ 2,698	$ 338	$ 795	$ 908
Passenger	259	15	684	1,070	1,076	450	3,234	125
Other	659	26	198	555	886	119	154	251
Total	14,689	733	1,338	3,113	4,660	907	4,183	1,284
Other Revenues	-	-	286	196	350	-	314	-
Total Revenues - excluding Subsidies	14,689	733	1,624	3,309	5,010	907	4,497	1,284
Government Subsidies	81	50	211	478	1,775	634	329	30
Total Revenues	$ 14,770	$ 783	$ 1,835	$ 3,787	$ 6,785	$ 1,541	$ 4,826	$ 1,314
Income Data (Millions):								
Net Income - including Subsidies	$ 559	$ 120	$ (119)	$ (60)	$ (911)	$ (1,109)	$ (1,616)	$ (89)
Government Subsidies and Other Payments	81	50	217	1,564	1,775	634	329	30
Net Income - excluding Subsidies	$ 478	$ 70	$ (336)	$ (1,624)	$ (2,686)	$ (1,743)	$ (1,945)	$ (118)
Route Length - Miles	201,300	16,084	11,326	22,556	18,075	10,152	13,110	13,792
Number of Employees:								
Rail (including M of W)	520,153	e	193,755	285,018	414,302	211,237	410,490	214,518
Other	-	e	59,290	383	12,385	7,677	22,404	14,444
Total	520,153	35,602	253,045	285,401	426,687	218,914	432,894	228,962
Maintenance of Way Employees	82,062	5,887	e	64,498	77,664	51,651	79,900	e
Avg. No. of Ry. Employees per Track Mile	2.6	2.2	17.1	12.6	22.9	20.8	31.3	15.6
Avg. No. of M of W Employees per Track Mile	.4	.4	e	2.9	4.3	5.1	6.1	e
Avg. Revenues per Employee - excluding Subsidies	$ 28,200	$ 20,600	$ 6,400	$ 11,600	$ 11,700	$ 4,100	$ 10,400	$ 5,600

Summary
Selected Statistics - 1973
Railroads

	United States Class I							
	Class I e	Canadian Pacific Limited	British Railways	French National Railways	German Federal Railways	Italian State Railways	Japanese National Railways	South African Railways
Labor Cost (Millions):								
Salaries	$ 7,089	$ 338	$ 1,030	$ 1,575	$ 3,541	$ 1,131	$ 2,333	$ 782
Social Benefits	1,253	43	120	695	1,690	272	683	e
Total	$ 8,347	$ 381	$ 1,150	$ 2,270	$ 5,231	$ 1,403	$ 3,016	e
Average Labor Cost per Employee:								
Salary	$ 13,600	$ 9,500	$ 4,000	$ 5,500	$ 8,300	$ 5,200	$ 5,400	$ 3,400
Social Benefits	2,400	1,200	500	2,500	4,000	1,200	1,600	e
Total	$ 16,000	$ 10,700	$ 4,500	$ 8,000	$ 12,300	$ 6,400	$ 7,000	e
Labor Cost to Revenues - excluding Subsidies	57%	52%	71%	69%	104%	155%	67%	61%
Full Carload Freight Traffic:								
Ton-miles (millions)	851,809	51,239	15,726	49,534	44,413	12,037	31,677	38,104
Average Revenue per Ton-Mile	1.6¢	1.4¢	2.7¢	2.6¢	4.9¢	2.8¢	1.9¢	2.3¢
Average Length of Haul - All Freight Traffic (miles)	533	589	75	177	121	199	209	320
Passenger Miles (Millions)	5,302	247	18,500	27,631	24,199	22,592	129,305	e
Average Passenger Revenue per Passenger Mile	4.9¢	3.9¢	3.7¢	3.9¢	4.4¢	2.0¢	2.5¢	e

e Excludes Amtrak & Conrail

Source: A Cursory Survey of Railroads in Selected Industrial Countries, Penrod's Bill of Prices Railroad Company, Memphis, 1 June 1974

Mr. CERRA. I might note though that the railroads in the other foreign countries are all Government-owned and they are running at huge deficits whereas ours are profitmaking.

Mr. KRUEGER. I knew in England, for example, they were running tremendous deficits. I was not aware of what was going on in Germany or Japan.

Mr. STAFFORD. Japan is deficit. Their passenger carriers are making some money, but their freight carriers are losing much. In fact, we had a delegation come to see us recently from Japan. Those who were running the railroads there wanted to know how we handle rate cases. They have to go before their Government body to tell them again about their growing losses, and they want to try to put into effect our form of ratemaking.

Mr. KRUEGER. Perhaps what they need to do is extend the country about 1,000 miles.

Mr. STAFFORD. I think they need a little longer run.

Mr. CERRA. As with the U.S. railroads, labor costs are a big factor in the foreign countries.

Mr. KRUEGER. That is another area that I probably will not get into at this moment.

I wish again to thank the chairman for the opportunity to question at such length. I wish to thank the panel as well. Mr. Chairman, thank you.

Mr. Moss. At this time the Chair is going to recognize Mr. Wunder for the minority.

Mr. WUNDER. Thank you, Mr. Chairman.

Chairman Stafford, you were asked a question in regard to conglomerates and your investigation of conglomerates. You responded in this way, "there are a great deal of rights and wrongs about this question."

What did you mean?

Mr. STAFFORD. I guess what I really meant by that was that there is a great deal of difference of opinion among the Commissioners as to whether or not we really are trying to usurp the management prerogatives of those managing these railroads.

There are those members of the Commission who feel that there is some question about our getting into this area of responsibility.

That is really what I meant by the rights and wrongs. I really meant that the argument is made by some members of the Commission that this is a management decision, and we shouldn't toy with it. I am not arguing the cause. I am just saying this problem arose during Commission discussions in 1970 and 1971 when we were first really trying to make a major effort in this area.

Mr. WUNDER. Chairman Stafford, are you suggesting that your authority under section 903 of the Rail Revitalization Act, the one recently enacted, may not be sufficient to allow you to conduct the type of inquiry that you would like?

Mr. STAFFORD. Mr. Chandler spoke to this and I believe he said that we would come back before the committee if we found that we needed some further assistance.

George, do you want to speak to that?

Mr. O'NEAL. I think the comment here was that what we would do is make every effort in the 1 year period to obtain the information, issue

subpenas and if they don't comply and whatever, that will be part of the report that the carriers do not comply.

Probably within that period of time we will be able to fight it out in the court and resolve the question.

Mr. WUNDER. If they do not comply, is there some question in your mind as to whether or not you can sustain your subpena on the basis of the authority you have been granted under the act?

Mr. STAFFORD. Mr. Gould spoke to some of the problems we are having now.

Mr. GOULD. My understanding is that section 903 does not add any additional authority to the Commission with respect to certain records. The underlying question is which records can be seen and what difficulties you have in obtaining them from companies other than regulated carriers. That was the question I responded to before.

This has gone to the courts and it will probably be sustained in the Supreme Court. We don't envision any substantial problems with respect to seeing records that will relate to properly instituted investigative proceedings.

Mr. KNAPPEN. Mr. Wunder, I would add that I think the legislation should make it easier for the Commission to get the records directly related to the question of conglomerates activities because that is the substantive direction in section 903. That certainly does not exist in those specific terms in the Interstate Commerce Act. Section 12–1 is much broader.

Mr. WUNDER. One question, Chairman Stafford, about the Office of Rail Public Counsel established under the act. You also established an Office of Public Counsel. On its face, there is a problem of overlapping between the operations of the offices.

Mr. STAFFORD. We voted to establish, on a very close vote in the Commission, such an office. We went forward with a request for funds for this. It is being considered now by the Appropriations Committee.

In other words, we don't have any money yet for any office. Then the Commerce Committee in the House and in the Senate came forth with your Rail Public Counsel. We really expect that the Commission will decide that we should on our own go forward with the public counsel for the balance of our authority simultaneous with the establishment of the Office of Rail Public Counsel.

Now, it would not be our thought that we would try to create a conflict. However the Commission, itself, did not give as much authority to the public counsel as the rail bill gave to the Rail Public Counsel. There is a difference in that respect.

The rail bill says the President shall appoint. As yet no name has been sent forward to the Senate for confirmation on that. Also, there are no funds available as yet. We appeared before the House Appropriations Committee just about a week ago, I believe it was, and asked for those funds.

Mr. WUNDER. Chairman Stafford, recently the House passed some amendments to the Consumer Product Safety Act, a floor amendment passed, known as the Butler amendment that provided that standards and regulations promulgated by the Consumer Product Safety Commission would be sent to Congress for acceptance or rejection if the Congress did not act within 30 days then the regulations would go into effect.

As I understand it, there is no similar provision in regard to the ICC. Would you have objection to sending your regulations to the Congress for approval?

Mr. STAFFORD. Do we have a request yet for a Commission position on that? I would not be able to tell you what the Commission's position would be on that.

I would have no objection. After all, we are in an arm of Congress. I suppose if there were deadlines put on it, things of this kind, so that if it had not passed on——

Mr. CHANDLER. What kind do you have in mind?

Mr. WUNDER. It would be similar to that passed by the House.

Mr. STAFFORD. I don't know what they had.

Mr. WUNDER. It provided that regulations and standards, before they go into effect, when they are promulgated by the Commission, are sent to Congress. If the Congress does not act within 30 days, then the regulations standards would go into effect.

Congress would have the right to in effect veto or keep from going into effect the pending regulation.

Mr. STAFFORD. Again, I have no problem with sending them to Congress, except that I recognize, too, that a great deal of political influence gets involved, even concerning Commission procedures in regular hearings. I would hope that if we had to send them, there would be rapid action on them.

Mr. Moss. How many rules or regulations do you issue in a year's time?

Mr. CHANDLER. That is the crux of what I was about to comment on, Mr. Moss. I think that the Commission would be severely hampered if it had to submit every regulation. For example, in attempting to move freight cars to meet an emergency, we can't wait 30 days, we do it overnight. The kind of regulations and standards which the Consumer Product Safety Commission or the National Highway Transportation Safety Administration issues is very different from the kind we would issue.

Ours generally go to a regulated industry and are technical in nature. We do have a lot of regulations. It is hard to say how many we issue during the year, but we fill three pretty healthy volumes of the Code of Federal Regulations.

These are largely accounting rules and that sort of thing. I suspect they would be pretty dull reading for the Congress.

In certain areas where we do regulate in such a way as to expand a section or make a more onerous burden on the carrier, I can see some reason why Congress would like to have some look at it. I think the legislation should be such that it is not hampering us in the regulations.

Mr. WUNDER. Thank you, Mr. Chairman.

Mr. Moss. I doubt very much that the legislation will be considered. I see no reason for it on the part of the Commerce Committee at this time.

Mr. Brown?

Mr. BROWN. Thank you, Mr. Chairman.

Chairman Stafford, I would like to focus on the Chair's opening statement. Pursuant to the chairman's request in his opening statement that you provide the timetable and the methodology for completing and taking final action on both the Smith and the Fitzwater

report findings, could you provide at this time that timetable for the subcommittee?

Mr. STAFFORD. No; not specifically, because at the conference that we had on this question I asked the Vice Chairman, Commissioner Clapp, if he would take on the responsibility for taking the blue ribbon committee report and the views expressed by the department heads and go into this.

Now in the meantime, I have asked him to meet with all of our top field people. They are coming in here in the next week or two. They have the responsibility in the field for putting all these into effect.

He will be meeting with them and will probably have within the next 30 days a plan prepared of some type to present to the Commission. We will be happy to supply you with whatever his proposals are, or with what the Commission finally is able to work out.

Mr. Moss. We would like to see both the proposals submitted to the Commission and the proposals as the Commission acts upon them.

Mr. STAFFORD. We will be glad to supply them, Mr. Chairman.

Mr. Moss. The record will be held at this point to receive the information.

Mr. STAFFORD. We will be happy to send them to you.

[As of the time of printing no materials concerning the Vice Chairman's review had been received by the subcommittee. We should note, however, that a timetable was provided (see Moss/Stafford correspondence appendix p. 394). The Commission, nevertheless, has not adhered to this timetable thereby making these materials unavailable for publication.]

Mr. BROWN. Isn't it true that the Fitzwater report did just that, interview responsible officials in the bureaus?

Mr. STAFFORD. They interviewed them. We have asked the department heads to reply to all of these. It is not a black and white situation, you understand.

Mr. BROWN. Why do you think this reinterviewing of the same individuals is necessary?

Mr. STAFFORD. It is not necessarily the same individuals.

Mr. O'NEAL. I think, too, we are talking about a little different kind of question. Mr. Fitzwater's group was asking what is the problem. We are now at the point of asking how do we solve the problem. This is really what Vice Chairman Clapp will be doing.

It is much easier for him and cheaper for all of us if he waits until the group comes to Washington rather than travel around the country.

Mr. BROWN. Could you provide us with a chronology of the activities concerning the review of the Fitzwater report?

[The following information was received for the record:]

CHRONOLOGY OF SMITH AND FITZWATER STUDIES

February 1974—Study initiated.

May 1975.—Preliminary report prepared.

June 1975.—Final report submitted to Managing Director.

July 1975.—Study submitted to Chairman Stafford for review and action.

July 1975.—Copies of study circulated to Directors Gould and Pfahler for review and comment.

July 1975.—Copy of study furnished to Commissioners Murphy and Corber for review and comment.

July 1975.—Chairman appointed second Blub Ribbon Panel and directed it to study the Commission's compliance program.

July 1975 to September 1975.—Informal discussions held between affected parties aimed at identifying needed changes and strengthening Commission's compliance program.

September 1975.—Smith Study furnished to Alan Fitzwater, Chairman, Second Blue Ribbon Panel, for review and analysis against the Panel's independent findings.

October 1975.—Blue Ribbon Panel's report, sometimes called Fitzwater Report, completed and submitted to Chairman Stafford.

December 1975.—Smith Study and Fitzwater Report circulated to the Commission and to Heads of affected Bureaus with request that the latter individuals promptly submit comments to the Chairman.

December 1975.—Commission held preliminary dicussion on the matter in conference. It was determined that action should await comments from Bureau Heads and the Managing Director.

December 1975.—Comments received from Heads of Bureaus of Accounts, Enforcement and Operations, as well as the Managing Director.

January 1976.—Matter preliminarily considered by the Commission in conference and turned over to Vice Chairman Clapp for study to see whether common agreement could be reached by the heads or the bureaus involved and, if so, his recommendation as to its efficacy.

January 1976.—Vice Chairman requested and received additional comments from the heads of the Bureaus of Accounts, Enforcement, and Operations and these were circulated by the Vice Chairman to the Commission.

Present Status.—Matter pending awaiting recommendation of the Vice Chairman following his discussion with agency personnel, study of relevant materials, and interviews with field staff personnel during the March–April Regional and Headquarters Management Conference.

Mr. BROWN. Have you taken any action at all since the Fitzwater report was submitted?

Mr. STAFFORD. Yes. In the process of the Vice Chairman's investigation, he has been interviewing the department heads who have the responsibility now in this area. He has been calling them together, putting the finger on them, so to speak.

They are all aware of the situation. I really think it is beginning to bear fruit. I have seen press releases going out every day or two on all the actions that are being taken.

Mr. BROWN. Do you intend to do any additional reports?

Mr. STAFFORD. I beg your pardon?

Mr. BROWN. Do you intend to do any more reports in addition to the Smith and Fitzwater reports?

Mr. STAFFORD. No. He will bring a proposal before the Commission. Again, I would like to say that all of this, before it became public, was an in-house management tool that we were using. It is a tool that we have used before, in a form. The other blue ribbon forum made changes within the Commission based generally on this methodology.

None of those were quite as far reaching. These could perhaps change the reorganization of the Commission.

Mr. BROWN. You would agree there are some very serious allegations concerning Commission problems contained in these reports?

Mr. STAFFORD. As an advocate, they are allegations, that is right.

Mr. BROWN. You have had a chance to review both the Smith and Fitzwater reports, is that correct?

Mr. STAFFORD. I have turned them over to my staff people to work on those and we have turned all of this over to the Vice Chairman. I am generally aware of most of it.

Mr. BROWN. Have you personally read these materials?

Mr. STAFFORD. I have not personally read all of it; no.

Mr. BROWN. Do you think it is worth your personal attention?

Mr. STAFFORD. Yes, sir, it is getting our personal attention. We are right on top of it. This is not the kind of decision you can sit down and say, "This is what we will do" when you are affecting some departments.

Mr. Moss. Mr. Chairman, I must confess to being somewhat puzzled. I have read the reports in order to be prepared for these hearings. You say you have not read the reports?

Are they important?

Mr. STAFFORD. I have not made it clear that the staff has been in to discuss this matter with me. We just have, as I am sure you do to, many reports before us every day.

Mr. Moss. That is the thing that troubles me.

Mr. STAFFORD. And many votes every day.

Mr. Moss. I have many reports. As you know, there is never a bill that reaches the floor of the House without a report. Normally I read the reports. There is never a hearing that doesn't cause each Member to have a hearing folder of at least this size and where it touches so directly upon the internal organization and functions of the Commission, it would seem to me that this would be of sufficient significance to require not only a referral to staff, because I occasionally refer to staff for analysis and comment, but a personal reading as well, as I have done, in order to be prepared for the hearings we are having today, of which this is the second in the series.

Mr. STAFFORD. Yes.

Mr. Moss. I am merely expressing the concern that these reports not become stacked to the point where you only feel that portions that the staff feels——

Mr. STAFFORD. I feel that the other Commissioners have read it other than myself. I just haven't sat down to read it word for word. I have had my own personal staff to review it.

Mr. Moss. You may continue, Mr. Brown.

Mr. BROWN. Chairman Stafford, I would like to know if you are aware of the panel's finding on page 4 of the Fitzwater report? The panel found that "the basic weaknesses identified in earlier studies exist and have not been corrected by the present structure."

I want to make the record clear that there have been numerous studies identifying the same problems that were again reidentified by the Smith and Fitzwater studies.

Mr. STAFFORD. Of course, the Smith study, which was discussed the last time we were before this subcommittee, is really the reason I called on the new blue ribbon committee to make a study of the whole thing.

Mr. BROWN. These other additional reports predate the Smith report. This situation has been going on since 1960. There was a management report by Booz, Allen, and Hamilton.

Mr. STAFFORD. That is before my time, yes, sir, They made a complete study of the entire Commission, prior to the time that the Commission reorganized itself.

Mr. BROWN. There was also a special advisory committee on Interstate Commerce Commission practices and procedures in 1960, a managing director's reorganization proposal in 1961, Commissioner Hutchinson's field reorganization proposal in 1962, a planning committee project for the headquarters office and bureau realinement as a

policy and planning committee project report and so on, all of which reported similar findings.

Mr. O'Neal. Mr. Brown, let me make an observation here.

Mr. Brown. Let me just finish. How long do you think it will take before the Commission acts on these problems, problems that have constantly been reported to the Commission?

Mr. O'Neal. I don't want to try to defend what the Commission has done before. I think we are moving on this now. I think it is fair to note that the agency did make some adjustments in the past.

The problem, and one of the reasons we are taking a longer look at it here is that the adjustments that were made didn't work out. In other words, one of the things that was done, and Mr. Gould can straighten me out on the dates, in the mid-1960's, somewhere, was to shift out of the Bureau of Enforcement special accounts and put them in the Bureau of Operations so they would be investigators rather than investigators and working with lawyers. That seemed to be apparently the millenium at that time.

It didn't work. At least certainly these reports indicated it didn't work.

I think you will note in the Smith report somewhere that report states that on paper at least the agency does have a pretty good compliance program, that is, in terms of what should be done.

Now the problem has been in implementing the standards and policies that have been set out." That is where we are running into difficulty. I think at this time we want to make sure we have a good implementation.

Mr. Stafford. We have a proposal.

Mr. Brown. I think the subcommittee would appreciate it if you would provide for the record the citation from the Smith report that specifically states that the Commission has a good compliance program.

Mr. O'Neal. I am sure it is in there.

Mr. Moss. If you wish, Commissioner O'Neal, we will hold the record and receive the information when you have it. [See p. 376.]

Mr. Stafford. Of course, as we stated in our last appearance before this subcommittee, the figures that were quoted in the blue ribbon report were for only 1971–72. I think there has been a tightening of direction and responsibility in the last year, or year and a half, as shown by the figures that were presented to you at the hearing the last time.

Mr. Brown. I would like to point out for the clarification of the record that there are indeed recommendations in the Smith report. A member of the staff of the Commission stated previously that there were none.

From page 125 on, there are specifically stated recommendations including one which comes very close to recommendations in the Fitzwater report. The recommendation says specifically that "The Commission redeveloped its national compliance policy based on its national transportation mission and the fiscal resources allocated by the Congress to carry it out. In reformulating such policy, the Commission should conduct a broad survey to ascertain the socio-economic impact of surface carriers both subject to and outside the scope of its jurisdiction, so that program objective and implementa-

tion will rest upon the most recent, salient aspects of public interest and need."

Has the Commission moved ahead to take action on this?

Mr. STAFFORD. I think we are moving ahead. I think we are showing progress even now, even before we have actually reorganized.

I think that recent reports coming out of the compliance section are showing considerable advance. This means much heavier fines being directed toward whatever benefits the violators may have received from the illegal actions that they took.

Mr. BROWN. There is one other clarification I would like to make in the record.

We had discussed, at our last hearings, the gross revenues of those companies having violations either above or below $250,000. I read several sections from the Smith report. I don't want these sections to be misinterpreted.

The section states, "Those (firms) with gross revenues exceeding $250,000 represent 77 percent of those with prior Interstate Commerce Act convictions."

It is my understanding that this means that of those in the sample, 77 percent with prior Interstate Commerce Act convictions had gross revenues exceeding $250,000.

The report states further that "Those with gross revenues of less than $250,000 represent 23 percent of those with prior Interstate Commerce Act convictions."

What does that mean? We are talking about a total of 100 percent. Only 23 percent of those with prior Interstate Commerce Act convictions, according to the way I read this, had gross revenues of less than $250,000.

Is that correct?

Mr. STAFFORD. I don't know whether that is right or not.

Mr. BROWN. If this were true, wouldn't this show an emphasis on the little guy with nothing to do with the total number of carriers in the industry?

If 77 percent of those with prior Interstate Commerce Act convictions had gross revenues over $250,000, and this same group had 96 percent of their cases dropped from prosecution, while only 23 percent of those with prior Interstate Commerce Act convictions (those with gross revenues less than $250,000) had only 4-percent of their cases dropped, does not that indicate some kind of enforcement emphasis is being placed on the small guy?

Mr. CERRA. We are not contesting those figures. We are looking into those to make corrections. We are not contesting the figures in there. What we are saying is that there are a greater number of small carriers. Necessarily they will have a greater number of violations.

Mr. BROWN. That is not what the document says.

Mr. CERRA. We will look into it and supply an answer for the record.

Mr. MOSS. We will hold the record at this point for the answer just discussed.

[The following information was received for the record:]

AN ANALYSIS OF STATEMENTS APPEARING ON PAGE 104 OF THE SMITH STUDY

An analysis of the statements appearing on page 104 of the Smith Study reveals that two basic allegations are being made here. The first is that those with gross revenues exceeding $250,000 representing 77 percent of those with

prior Interstate Commerce Act convictions while those with less than $250,000 in gross revenues represented 23 percent of those with prior Interstate Commerce Act convictions. These figures are to be compared with the other major allegation which is that 96 percent of those with prior Interstate Commerce Act convictions who were dropped from prosecution were in the over $250,000 category, while only 4 percent were in the under $250,000 category.

The question presented by the statistics is whether or not they demonstrate too much emphasis in the compliance program on small repeat offenders. The answer to this question hinges on a number of factors. One such factor would be the reliability of the statistics. Another consideration is the meaning of "dropped from prosecution." If this refers merely to investigations instituted that did not lead to a formal prosecution, then the questions arise as to whether the investigations revealed differing levels of continued violations in the two categories and whether an appropriate level of investigation was being carried on with regard to both large and small repeat offenders.

It is difficult questions such as these that have led to the Commission's ongoing consideration of the entire matter, and it is expected that when issues such as these are resolved, the Commission will be able to take appropriate action to rectify any shortcomings that have been demonstrated.

Mr. Moss. Now, Commissioner O'Neal?

Mr. O'Neal. I just want to read the portion that I recalled when I spoke earlier.

Mr. Brown. Which page?

Mr. O'Neal. It is on page 125. I did not recall it perfectly but it does go toward the direction that I suggested.

It says, "The manuals of the Bureau of Operations and Enforcement are an outstanding compandium of how to accomplish the myriad tasks involved in handling investigations and prosecutions. Few guidance gaps are apparent. They are informative, thorough and concise and an ideal and continuing reference source for the neophyte and experienced both."

Then it goes on to say. "Manuals on how are not substitutes for policies on what, why, and who. These must emanate first, then undergird all that follows."

That is really what I was referring to in this report. In other words, we do have some paper that says how to do it. We are trying to improve that.

Mr. Moss. Mr. Krueger, do you have any further questions?

Mr. Kruegar. No further questions, Mr. Chairman.

Mr. Moss. I think the subcommittee will be able to handle additional questions relating to the subject matters discussed this morning by mail. We may yet require an additional public session.

I do want to call to your attention, Mr. Chairman, to a matter which has been brought to my attention and one where I feel as the Chairman of the subcommittee I must caution the Commission in the strongest possible terms.

This subcommittee, under my direction, contacted an agent of the Interstate Commerce Commission in the Pennsylvania region, by the name of Frank Lawrence. I recognize that he is a controversial member of the Commission staff.

Nevertheless, the series of developments occurring since the subcommittee contacted Mr. Lawrence strongly suggests that reprisal is being instituted against this employee.

I want to caution that as long as I have the Chair, and as long as I continue to chair, that I will insist upon very strict adherence to the terms of 18 U.S. 1505 regarding any effort to take reprisal against a witness who has supplied material to Congress.

I would view most seriously actions such as taking away his secretary, reducing the level of work assigned, actions which have been reported to me.

I think they call for your personal attention.

I would want personal assurances that any harassment will not continue.

Mr. STAFFORD. I am not aware——

Mr. Moss. I realize, Mr. Chairman, you are not aware. I am now making you aware, so that there will be——

Mr. STAFFORD. If it is true——

Mr. Moss. If it is not, then I may have to determine why the allegations are being made. I have never yet permitted a witness before this subcommittee or any committee which I have chaired, to be abused nor do I ever intend to.

Mr. STAFFORD. Mr. Chairman, I know nothing about it. Needless to say, I became aware of the gentleman when the press carried a pretty wild story that he was putting out. I don't know. I will check.

Thank you.

Mr. CERRA. Mr. Chairman, that does concern me very much as head legal counsel. I believe every citizen has the right to come before Congress and express his thoughts.

Mr. Moss. Beyond that, Mr. Counsel, Congress has the right to go to any citizen.

Mr. CERRA. Right.

Mr. Moss. In this case, the Congress went to the citizen. There is therefore a particular responsibility imposed upon the Congress to see that that citizen does not suffer, whatever his status might be, in or out of Government service, as a result of cooperating with the Congress.

Mr. CERRA. I totally agree with you, Mr. Chairman. We certainly will look into the matter and stop any possible type of action of that nature and give you a full report on that.

Mr. Moss. Thank you very much.

The subcommittee will now stand adjourned.

[Whereupon, at 12:00 noon, the subcommittee adjourned.]

APPENDIX

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C. 20515

ROOM 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

MICHAEL R. LEMOV
CHIEF COUNSEL

J. THOMAS GREENE
COUNSEL TO THE CHAIRMAN

March 29, 1976

HAND DELIVERED

Honorable George M. Stafford
Chairman
Interstate Commerce Commission
Washington, D. C. 20423

Dear Mr. Chairman:

To complete the record of the Interstate Commerce Commission Oversight and Regulatory Reform Hearings of February 23 and March 5, 1976, please furnish the Subcommittee with responses to the following requests.

(1) At our February 23rd hearing (transcript at 33), in my opening statement on March 5th (transcript at 2-3), and later in the hearing on March 5th (transcript at 2-55), you were asked to provide this Subcommittee with ". . . a timetable detailing the Commission's plan and the methodology for reviewing the serious allegations in these two reports [Smith and Fitzwater reports]." No timetable was presented. Please provide the Subcommittee with this timetable.

(2) Please supply the Subcommittee with any assessments made by your agency of nationwide cost to the public of violations from each of the five enforcement categories (Significant Tariff, Elkins Act, Unlawful Control, Demurrage and Detention, and Clayton Act violations) cited in the Fitzwater Report.

(3) On page 6 of your statement, you indicate that the Commission has moved to ensure that "the average consumer is as fully protected as possible by the Commission actions." According to the Commission's own internal reports (Fitzwater and Smith reports) is the consumer being fully protected? How do you define "consumer" in this context? Please refer to any speeches, other policy directives, or regulations which define "consumer". Would you discount the involvement of the end user in this process?

(4) Do you have a field staff manual on policing pipeline violations? Water carrier violations? Please supply copies. What are your enforcement priorities for these modes?

(5) Do your enforcement officials face barriers in gaining access to shippers' records? If so, please cite examples. What remedial steps has the ICC staff proposed to the Commission? What do you recommend in this regard?

(6) Is it the Commission's policy that investigations of violations against bankrupt carriers have "little enforcement potential"? Are bankrupt carriers being prosecuted for violations? If not, why not? Do you plan to make changes to correct the situation?

(7) Do you feel that the Bureaus of Enforcement and Operations are directing their resources appropriately? Should these Bureaus be concentrating more on pursuing large violations with large economic impact?

DELAY

(8) The Subcommittee's June 1975 questionnaire asked you to list the Commission's 20 oldest proceedings. In the eight months which have passed since that questionnaire, how many of the proceedings have been concluded? (See Attachment A)

(9) What is the oldest proceeding?

(10) How many proceedings of any type--rail, truck, freight forwarder, pipeline, or water carrier (please specify type)--does the Commission have which are older than four years; three years; two years? (Under Section 303(b) of the Railroad Revitalization and Regulatory Reform Act of 1976, all these cases must be administratively concluded in three years.)

(11) Estimate the cost to ICC of processing each of the 20 oldest proceedings.

(12) What is the average time for the Commission to decide each case once that case has been presented to it? In the last two years, how many cases has it taken longer than three months to decide?

(13) What is the average term for the Commission to approve the report of its decision? In the last two years, how many decisions have taken longer than three months to approve?

(14) What effect does the number (11) of commissioners have on the Commission's ability to reach a collegial decision? If the Commission were smaller (e.g., 5), could it act faster?

(15) Unnecessary delay imposes a great burden on small businesses attempting to gain authorities or extensions of authority. Enclosed (Attachment B) you will find a case concerning a common carrier application for a James Blake Chisolm. You will note that the final decision in this case took some 32 months since the date of filing. What possible reason could there be for this lengthy delay? Is this amount of delay untypically long for a small businessman to wait for a final decision on an application of this type?

PARTICIPATION IN AGENCY PROCEEDINGS

(16) What is the extent of the involvement and participation of the White House, the Office of Management and Budget, the Council on Wage and Price Stability, and other Executive councils in Commission proceedings?

ABANDONMENT

Central to the concept of abandonment is the interpretation of the phrase "public convenience and necessity." In testimony before the House Commerce Subcommittee on Transportation and Commerce, in February of this year, Commissioner McFarland, when asked which of the two criteria--economics or public convenience and necessity--should come first in deciding abandonment cases, stated that economic considerations should come first.

(17) Do you share this view?

(18) What specific criteria did the Commission apply in the past in abandonment decisions?

(19) What are the differences between ICC and railroad cost allocation to branch lines and why do these differences exist?

(20) Does ICC force railroads to operate lines which are money losers for the railroads? If so, why?

(21) What problems prevent faster resolution of abandonment procedures?

(22) What is the ICC doing to expedite abandonment procedures?

(23) Can abandonment cases be considered in groups instead of individually? If so, should ICC encourage such action?

(24) As a result of the subsidies provided under the Railroad Revitalization Act, will ICC relax its abandonment requirements?

(25) Is it appropriate to subsidize lines ICC approves for abandonment, or should subsidy be directed to marginal lines which are not abandoned?

(26) What can ICC do to reduce "de facto" abandonments?

Please address the issues in the correspondence from the Honorable Richard Nolan (D-Minn.) to the Honorable John E. Moss, Chairman, Oversight and Investigations Subcommittee. (See Attachment C.)

EARLY WARNING SYSTEM

(27) How many railroad bankruptcies have there been since 1972?

(28) Why hasn't this information been relayed to the Congress to assist in its transportation planning efforts?

(29) Why hasn't the Commission warned the public of these impending financial difficulties?

(30) If the system is capable of "pinpointing railroad danger spots" has the Commission taken steps to warn the companies and assist in correcting these danger spots?

(31) What kind of information is collected from this system?

(32) Have all individuals with access to this Early Warning System data submitted personal financial assessment statements?

(33) Do you see any reason why the appropriate Congressional committees and even the general public should not receive these reports?

(34) Please supply the Subcommittee will all Early Warning System reports from the time this system was established until January of 1976.

RAILROAD CAR HIRE RATES

(35) Are car hire rates set at correct levels at the present time?

(a) If so, why is car utilization poor?

(b) Why are there car supply problems?

(c) Why is the incentive per diem program needed?

(d) If not, what is the ICC doing to ensure that they are set at correct levels?

(36) What is the ICC's role in establishing line haul revenue sharing agreements between railroads?

(37) What does ICC plan to do about the administrative difficulties with the incentive per diem program?

(38) Is it true that Union Pacific has amassed some $50 million in funds through the collection of its incentive per diem? Have these funds been put to the purchase of new cars? If not, why not?

RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976 IMPLEMENTATION

(39) Section 304(b) of the new Railroad Revitalization and Regulatory Reform Act of 1976 guarantees a right of any "interested person" to petition the ICC to take any action relating to railroads. The Commission is required to answer each such petition within 120 days. If it deems the petition unworthy of action or fails to answer it within 120 days, the petitioner may sue, under a rather liberal evidentiary standard, to force the Commission to commence the proceeding. Has the Commission received any such petitions since passage of this Act?

(40) Please provide for the Subcommittee your assessment of the importance of the phrase "market dominance."

(41) What difficulties does the Commission foresee in arriving at a standard definition of this term?

(42) Does the ICC have authority to tell the carriers how to assign their non-unit train cars as well as their unit train cars when there is a need for them?

(43) If not, will the Commission ask Congress for this authority?

(44) What will be the effect of the expanded use of unit trains on already over-burdened rail facilities?

(45) What effect will the expanded use of unit trains have on small shippers?

ECONOMIC FORECASTING

The Commission has stated that it has a financial forecasting capability which can translate the general economic outlook for the nation into its general impact on transportation services.

(46) Why has the Commission not forwarded these forecasts to the Congress?

(47) Why has the Commission not released these forecasts to the general public?

Please supply the Subcommittee with all transportation forecasting reports since the inception of this program.

In addition to responding to these questions, please furnish the Subcommittee with responses, updated to January 31, 1976, to the following questions from the Subcommittee's questionnaire of last summer: 6, 7, 8, 26, 35, 55 (include an indication of which committees are chartered as "advisory committees" as prescribed by the Federal Advisory Committee Act), 72, 73, and 76.

Please submit the material requested in this letter, as well as material requested during the hearing, by April 9, 1976.

Thank you for your attention. We realize these requests will require time and effort for full responses by the Commission. However, careful and complete replies are critical to the Subcommittee, and we trust our questions will be answered in this light.

Sincerely,

JOHN E. MOSS
Chairman
Oversight and
Investigations Subcommittee

JEM:lbw

Enclosures

ATTACHMENT A

QUESTION NUMBER 35: By major category, list the oldest 20 agency proceedings currently before your Commission, by date, subject matter, and petitioner or affected party. Describe current status.

Please see attached listing.

Attachment
35a -- Listing of the oldest 20 proceedings currently before the Interstate Commerce Commission

PREFIX	DOCKET	SUB	TITLE	FILE DATE	AGE	STATUS
MC	66562	1943	Railway Express Agency, Incorporated	3/27/63	146	
	66562	1945	Railway Express Agency, Incorporated	4/10/63	145	Pending Oral Argument
	66562	1948	Railway Express Agency, Incorporated	4/19/63	145	
	66562		Railway Express Agency, Incorporated	2/10/66	111	
Ex Parte	251		Joint Rates and Practices of Surface and Air Carriers - REA Request for Declaratory Order	2/01/67	99	Pending a Petition for Reconsideration
MCC	6142		Cherokee Motor Lines, Inc.	7/10/68	82	Pending Court Restraining Order
FD	25426		Missouri Pacific Railroad Company, Union Pacific Railroad Company, et al	12/05/68	77	Embraced in FD 22688 and 25103 Order Served
NOM	34013	1	Cost Standards in Intermodal Rate Proceedings	2/05/69	75	Final Report Circulated
NOR	35141		The Chesapeake and Ohio Railway Company	7/20/69	70	Awaiting Final Report
MC	119689		Peerless Transport Corporation	7/16/69	70	Pending Final Decision
	119689	11	Peerless Transport Corporation	9/15/69	68	

PREFIX	DOCKET	SUB	TITLE	FILE DATE	AGE	STATUS
MCF	10788		Eastern Freight Ways, Inc. - Control - E. J. Scannel, Inc., and Central States Transportation Co., Inc.	3/19/70	62	Held in Abeyance & Embraced in F-11626 & F-11632
FD	26138		Eastern Freight Ways, Inc., Assumption of Obligation and Liability	3/19/70	62	Held in Abeyance with F-10788 Until Decision in F-11626 & F-11632
MCF	10783		Continental Trailways, Inc. - Control - Colonial Trailways	3/16/70	62	Pending Final Decision Embraced in F-11473
MCC	6810		J. W. Allan (A Partnership) Investigation of Operations	4/10/70	61	Final Report Circulated to Entire Commission
NOR	35350		Restrictions on Unloading of Meats	4/06/70	61	Included in No. 35410 & Embraced in 35054 Pending Final Report
NOR	35265		Anglo Canadian Pulp and Paper Mills Limited v. Aberdeen and Rockfish Railroad Company, et al	6/01/70	59	Replies to Exceptions Extended to 8/04/75
NOR	35291		Investigation into the Management of Business of Penn Central Transportation Company and Affiliated Companies	7/02/70	58	Held in Abeyance for Ex Parte 293 - Rail Reorganization Act

PREFIX	DOCKET	SUB	TITLE	FILE DATE	AGE	STATUS
FD	26303		Mackinac Transportation Company, Entire Lane Abandonment Between St. Ignace and Mackinaw City, Mich.	8/13/70	57	Pending Petition and Final Decision
FD	26449		Atchison, Topeka and Sante Fe Railway Company, Abandonment Tom Green County, Tex.	12/14/70	53	Recommended Order Served; Pending Final Decision
MCF	11094		Navajo Freight Lines, Inc., Investigation of Control Garrett Freight Lines, Inc.	2/18/71	51	Replies to Exception Extended to 7/21/75 Embraced in F-11198
NOR	35366		The Atchison, Topeka and Santa Fe Railway Company et al v. Colorado and Wyoming Railway Company	2/04/71	51	Pending on Petition for Reconsideration
ISM	22930		Small Shipment Rate Revision - Eastern Central Territory	3/30/71	50	Final Report Circulated to E. C.
MCC	7287		AAACON Auto Transport, Inc., Investigation on Revocation of Certificate	3/18/71	50	Pending on Petition for Reconsideration
	7287	1	AAACON Auto Transport, Inc., Petition for Declaratory Order	6/21/71	47	Pending on Petition for Reconsideration

ATTACHMENT B

SYNOPSIS OF TIME BEFORE THE INTERSTATE COMMERCE COMMISSION

James Blake Chisolm : MC i38806
Common Carrier Application :

		Mo.Delay
Application Filed	11/20/72	
Application Resubmitted	7/73	8 months
Temporary Authority denied	2/11/74	7/15
Motion for Oral Hearing	5/3/74	10/18
Employee Review Board favorable decision	2/7/75	19/27
Division One assigns for oral hearing de novo	4/29/75	21/29
Hearing Savannah, Ga.	6/24/75	23/31
Decision of Admin. Law Jdg. favorable	8/18/75	25/33
Exceptions filed	9/75	26/34
Replies and Petition for oral hearing before full Commission and submission of new evidence	10/75	27/35
Februry 1976		31/39months

*Months separated by slash marks show time from resubmission of application and also time from original filing.

ATTACHMENT C

RICHARD NOLAN
6TH DISTRICT, MINNESOTA

COMMITTEES:
AGRICULTURE
SMALL BUSINESS

Congress of the United States
House of Representatives
Washington, D.C. 20515

JAMES A. DECHAINE
ADMINISTRATIVE ASSISTANT

1019 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-2331

DISTRICT OFFICES:
921 4TH AVENUE
WORTHINGTON, MINNESOTA 56187
(507) 376-5905

908 ST. GERMAIN
ST. CLOUD, MINNESOTA 56301
(612) 252-7580

FEDERAL BUILDING
REDWOOD FALLS, MINNESOTA 56283
(507) 637-3565

April 21, 1975

The Honorable John E. Moss
Chairman
Subcommittee on Oversight & Investigations
Committee on Commerce & Health
2323 RHOB

Dear Mr. Chairman:

This is in response to your recent request for recommendations for committee hearings. In recent years railroads serving Minnesota rural communities have chosen to abandon the branch lines serving those communities, oftentimes resulting in economic disaster for the affected communities. In the ICC hearings on abandonments the smaller communties have not proven to be much of a match against the railroads and thus, 99% of the railroad abandonment requests have been granted.

With the increased emphasis on transportation needs and energy conservation, it would be beneficial for the committee to investigate a number of questions regarding these abandonment practices. Some of those questions in my judgment would be:

1) What does adequate or inadequate rail transportation mean for this country?

2) What is the amount of volume in trade that could be anticipated with regular railroad transportation to branch line communities?

3) Can railroads make money on these branch lines?

4) What are the energy implications of railroad versus other modes of transportation?

5) What are the railroads' immediate and long-range abandonment plans?

6) What are the implications for various sectors of our economy if adequate railroad transportation is not available?

7) The committee could solicit ideas from the people on how railroad service could be assured to branch line communities without incurring enormous costs to taxpayers.

If the committee would be willing to consider these questions and conduct hearings I would like to suggest that a hearing be held in Southwestern Minnesota where a number of abandonments have been proposed and are currently under consideration by the ICC, where a number of farmers, businessmen and citizen groups are anxious and prepared to give testimony and where an exhaustive study on commodity transportation problems has been conducted by a branch of the University of Minnesota serving that area.

Your earnest consideration of this request will be greatly appreciated.

Sincerely yours,

Richard Nolan

RICHARD NOLAN
Member of Congress

RN;scy

Interstate Commerce Commission

Washington, D.C. 20423

OFFICE OF THE CHAIRMAN

April 9, 1976

Honorable John E. Moss
Chairman
Subcommittee on Oversight and
Investigations
Committee on Interstate and
Foreign Commerce
House of Representatives
Washington, DC 20515

Dear Chairman Moss:

I am enclosing herewith the Commission's responses to the questions propounded in your letter of March 29, 1976. If you have any further questions, please do not hesitate to call upon me.

Sincerely yours,

George M. Stafford
Chairman

Enclosures

Question 1:

At our February 23rd hearing (transcript at 33), in my opening statement on March 5th (transcript at 2-3), and later in the hearing on March 5th (transcript at 2-55), you were asked to provide this Subcommittee with ". . . a timetable detailing the Commission's plan and the methodology for reviewing the serious allegations in these two reports [Smith and Fitzwater reports]." No timetable was presented. Please provide the Subcommittee with this timetable.

The Commission anticipates that it will be several months (between 4 and 6) before final changes are made in our organizational structure, if indeed any major changes are deemed appropriate. The timetable set forth herein is simply a proposed schedule, to which we will definitely try to adhere.

As you are aware, Vice Chairman Clapp has been asked to review the several studies,to make his own analysis, and to report back to the Commission. His recommendations are expected to be submitted by the end of April 1976. The Commission will then meet for a preliminary discussion of the matter at its scheduled conference on May 4, 1976, or a special conference will be called shortly thereafter. Within 2 days of the initial conference, the Vice Chairman, as coordinator, will begin meeting with the Managing Director and the 3 Bureau Heads most involved to inform them of his own recommendations and to request their written reactions within a week. Those recommendations will be circulated to the Commission. It is anticipated that further discussion of this matter will be held at the regular conference on May 18, 1976, or at a specially called conference shortly thereafter. It is anticipated

that the appropriate Bureau Heads and Managing Director will be invited to that meeting and encouraged to participate and respond to questions from the Commissioners.

The outcome of that meeting will indicate how much additional time is required. It might be that the Commissioners would want to continue the conference after the staff members have completed their presentations to decide on specific points raised. It is more likely that they would prefer another week or more to review the proposals or to consider the alternatives. Then another conference could be held.

At this point the Commission cannot predict how much controversy will be involved once the first two conferences have been held because we cannot anticipate all the complications that might result from any change in policy. Nevertheless, we do expect to have formulated a position on the matter by our third conference. Once the Commission decides on a course of action, then the time required to implement it (provided there are changes involved) will be determined by the nature of the changes agreed upon. If they are minor they could be accomplished quickly; if the changes are major, obviously, there will be delays. For example, appropriations might have to be sought; staff personnel changes or transfers could be involved.

Our estimate of the time, therefore, is that the process will take 4 - 6 months, and that the timetable set forth above will be followed.

(2) Please supply the Subcommittee with any assessments made by your agency of nationwide cost to the public of violations from each of the five enforcement categories (Significant Tariff, Elkins Act, Unlawful Control, Demurrage and Detention, and Clayton Act violations) cited in the Fitzwater Report.

The Commission has made no assessment of nationwide cost to the public of violations of tariffs, the Elkins Act, Unlawful Control Provisions, Demurrage and Detention tariffs and Clayton Act violations. Since each of the foregoing types of violations may have many different economic ramifications in any given specific situation, e.g. loss of competitive markets, loss of maximized utilization of equipment, etc., it appears virtually impossible to place a realistic specific dollar value upon the effects of such violations on shippers. Indeed, by way of illustration, Congress has recognized the difficulty in placing a specific value on all Elkins Act violations by providing two alternative "whereby" clauses in the legislation. One clause deals with violations whereby the rebate or concession may be calculated in approximate terms of a dollar defeat of tariff rates, and other violations involving discriminatory practices may be tested in terms of one party being advantaged to the detriment of another without a showing of a specific dollar loss.

(3) On page 6 of your statement, you indicate that the Commission has moved to ensure that "the average consumer is as fully protected as possible by the Commission Actions." According to the Commission's own internal reports (Fitzwater and Smith reports) is the consumer being fully protected? How do you define "consumer" in this context? Please refer to any speeches, other policy directives, or regulations which define "consumer". Would you discount the involvement of the end user in this process?

There are risks in attempting to define "consumer" in any context. Webster provides a broad definition: the user of economic goods. But in modern parlance, "consumerism" and "consumer advocacy" appear to denote a concern about those who purchase goods and services at retail primarily for their own use or benefit. Your question employs an abbreviated but apt reference to the consumer as the "end user."

Under our private enterprise system, producing entities seek to maximize profits by all available lawful means, while the consumer is concerned with minimizing prices and maximizing quantity and quality of the product or service. If the system is to succeed and attract both customers and investment capital, there must somehow be an accommodation of all the interests concerned.

The National Transportation Policy preceding section 1 of the Interstate Commerce Act calls for sound economic conditions in transportation and safe, adequate, economical and efficient service at reasonable charges without unjust discrimination or destructive competition, but with fair wages and equitable working conditions. Presumably, the satisfaction of all the elements

in that policy statement will produce a condition that is optimal for the consumer. The variety of elements which must be accommodated indicates on its face how difficult it is to define the word "consumer" in the context of the transportation industry and its regulation.

To answer the last part of the question first, the "end user" is an integral, essential part of our regulatory system. The consumer is a welcome participant in any proceeding, although customarily he or she participates primarily in rulemaking and rate increase matters. Because he is the "end user" of transportation services, he ultimately pays the cost. His interest is considered at least as important as that of any other party.

Shippers, receivers of goods, passengers, and members of the general public are all affected by the transportation industry. It is hoped that the following summary of Commission statements and regulations will demonstrate the Commission's concern for all consumers pursuant to its duty to regulate transportation in the public interest. Complete texts of the speeches and publications referred to below are attached to this summary for reference.

As noted by Commissioner Brown in her remarks before the Women's Traffic Association of Jacksonville, Fla., on May 2, 1975, the word "consumer" does not appear anywhere in the Interstate Commerce Act. The phrases "public interest" and "national interest" do appear there, and protection of the consumer has always been acknowledged as the principal factor in the Act's reason for being. The Commission's 89th Annual Report to Congress (for the fiscal year ending June 30, 1975) indicated that the Commission considers the consumer to be the "man on the street" and the "homemaker", as well as the merchant who

sells them what they consume. The consumer is the distributor, the manufacturer, the farmer, and even agri-business. The city, the port, the State, and geographical regions are consumers. In other words, consumers are members of the general public who utilize the various modes of transportation and who receive the benefits of transportation that may not be visible but which determine physical and economic health. Thus, the consumer interest could be construed as being co-extensive with the public interest.

The shippers who rely upon transportation services to deliver their goods to their consignees and the public are the primary consumers of transportation services. Their interest in securing adequate transportation is protected to a great extent by the Commission's procedures which provide that shippers be made parties to proceedings which determine whether or not a carrier will be authorized to provide service. Shippers are entitled to be represented by counsel in these proceedings and to adduce evidence in support of a carrier's application for operating rights.

Of course, not all of the potential problems faced by shippers are dealt with in an application proceeding. The mere grant of operating rights will not benefit a shipper unless it is informed of the carrier's ability to render the required service. In his statement entitled "Consumer Related Programs and Actions of the Interstate Commerce Commission", which was submitted to the Senate Committee on Commerce, Subcommittee for

Consumers, on February 17, 1976, Chairman Stafford outlined the many services offered to the consumer by the Commission, including the shipper-consumer of transportation services. The Commission issues orders requiring the dispatch of rail freight cars to areas experiencing a shortage. The Commission's Section of Rates and Informal Cases, responds, often over the telephone, to questions concerning tariff interpretation. This service is particularly valuable to the small businessman who is not able to employ a full-time traffic manager or to maintain a traffic department. The consumer protection unit of the Bureau of Traffic is charged with the responsibility for examining carrier rates proposals which could have an adverse effect upon the consumer - particularly the small company which does not maintain its own professional traffic department and which is not in a position to obtain the necessary legal services to file formal protests to rate increases which might be adverse to its interests. The Commission has dealt with the problems of small shippers and required that reasonable joint-line rates be continued, so that adequate transportation service would be available to small businessmen as well as large shippers. Through the Section of Insurance of the Bureau of Operations, the Commission assures that the public is protected against losses stemming from motor vehicle accidents involving regulated carriers or from the loss of, or damage to, the cargo which they transport. The Commission is actively involved in insuring

the continuance of adequate rail service to the shipping and traveling public through its participation in the reorganization of the bankrupt eastern railroads pursuant to the Regional Rail Reorganization Act of 1973. The Commission is also involved in environmental protection, an issue of vital concern to all consumers, and develops proposals for alternate uses for abandoned rail lines and provides special procedures for authorizing the transportation of recyclable waste products.

As noted at the beginning, the general public, as well as the individual shipper, has an interest in the maintenance of an efficient and sound transportation system. The Commission, because it is charged with the duty of regulating surface transportation in the public interest, acknowledges its duty to protect all consumers. The Commission strives to provide information and assistance to the public concerning the transportation industry and the functions of the Commission. The Commission's Public Information Office now acts as a Consumer Information Office. It maintains toll-free a "hot-line" telephone service which any member of the public may use to acquire information about the Commission or about a transportation service performed by a regulated carrier. The Consumer Information Office also maintains a liason with many other Federal, State, and local consumer protection agencies and regularly issues a consumer bulletin which informs these organizations of all Commission actions of possible public interest. In addition,

"Consumer Assistance Specialists" have been assigned to consumer assistance activities at key Commission field offices throughout the country to direct consumers to transportation services, investigate complaints, and correct deficiencies.

The two areas of transportation in which members of the general public are most likely to have direct contact with the industry are the movement of household goods and passenger operations. The Commission has been very active in recent years in insuring that the public interest is protected in these vital areas.

In 1970, the regulations governing the transportation of household goods were revised as a result of the proceedings in Practices of Motor Common Carriers of Household Goods, Ex Parte No. MC-19 (Sub-No. 8), 111 M.C.C. 427 (1970). The purposes of these regulations were summarized by Commissioner Corber in a speech entitled "Regulation of Household Goods Movers" delivered before the Mover's & Warehousemen's Association of America, on March 18, 1976. Briefly, the revised regulations adopted a definition of reasonable dispatch with notation on the bill of lading of the agreed delivery time; provided for weighing of shipments to be observed by the shipper; prescribed a new, more informative form of vehicle-load manifest; promulgated new forms and rules regarding estimated charges; modified claims handling; prohibited requirements for signed releases by shippers; and changed pickup and delivery practices in regard to notice of delay, among other revisions.

On the basis of experience a number of changes have been made in the Sub-8 rules. Recently the Commission approved substitution of drivers' weight certificates for vehicle-load manifests (Ex Parte No. MC-19 (Sub-No. 26)). Even more recently in Sub-20 the Commission adopted a rule requiring carriers to assume liability for all articles, except perishables, transported or held for storage-in-transit, subject to released rates. Thus, prior notice of items of extraordinary value may not be required. In addition, replacement cost is to be the measure of damages. Finally, 10 days advance notice must be accorded the shipper of conversion from storage-in-transit to permanent storage and the shipper shall have 9 months from the date of conversion to file claims.

In an effort to inform prospective shippers of household goods, the Commission publishes a Summary of Information for Shippers of Household Goods. This useful booklet contains information about all aspects of the movements of household goods and advice concerning what to do if problems arise. It is available to the public free of charge.

One of the primary concerns of the Commission is to insure that safe and adequate passenger service by rail and by bus is available to the public. Section 801 of the Rail Passenger Service Act of 1970 (45 U.S.C. 641) authorizes the Commission to "prescribe such regulations as it considers necessary to provide safe and adequate service, equipment, and facilities for intercity rails passenger service." A detailed description

of the Commission's activities in this area, and its in-depth assessment of the present status of Amtrak is contained in its Annual Report on Amtrak which was presented to Congress on March 15, 1976.

The Commission prescribed regulations to assure the adequacy of rail passenger service in Ex Parte No. 277 (Sub-No. 1), Adequacy of Intercity Rail Passenger Service, which appears at 49 CFR 1124. The purpose of these regulations and other rulemaking proceedings in this area are summarized by Commissioner MacFarland in his statement on the Commission's oversight of Amtrak service given before the House Committee on Interstate and Foreign Commerce, Subcommittee on Transportation and Commerce, on March 11, 1976.

On December 26, 1974, the Commission initiated Ex Parte No. 277 (Sub-No. 3), Adequacy of Intercity Rail Passenger Service "to inquire into and determine the quality of intercity rail passenger service with a view towards determining whether the Commission should prescribe additional rules and regulations, recommend additional legislation or take other appropriate action as is deemed to be in the public interest." Public hearings were held in various cities throughout the Nation. Testimony was taken from 308 public witnesses, as well as representatives of the National Railroad Passenger Corporation (Amtrak), several railroads and staff members of the Commission. Subsequently, an initial decision was issued by the Administrative Law Judge containing

his findings of fact and proposed modifications of the Regulations Governing the Adequacy of Intercity Railroad Passenger Service.

On March 29, 1976, the Commission issued its report in this matter modifying some of the above-described regulations. A copy of our decision will be transmitted to you as soon as it is published.

The Commission continually strives to insure that adequate and safe passenger bus service is available to the public. In 1971, in response to wide public concern, the Commission promulgated regulations providing for the separate seating of smokers and non-smokers in interstate passenger buses, where smoking is otherwise permitted by the carrier and by law. The regulations, as set forth in 49 CFR 1061.1, became effective April 22, 1974, and provide essentially that the smoking section shall consist of a number of seats, in the rear of such buses, not to exceed 20 percent of the seating capacity of the buses. In unusual circumstances, the bus driver or other carrier employee may make minor modifications in the defined smoking section, to assure the comfort, convenience, and safety of all passengers.

In October 1975, the Commission, following extensive field investigations, instituted an investigation into the adequacy of the broad scope of services offered by motor common carriers of passengers. The proposed rules being considered are aimed at substantial consumer improvements and include: requiring more responsive information to passengers concerning ticketing and schedules; high priority and security for baggage; a requirement

for terminals or minimum bus-stop facilities for passenger comfort and safety; requirements for notices of schedule changes and a reservation system; a requirement for operable cooling and heating systems; and special assistance for handicapped, disabled, blind, and elderly passengers.

In 1974, the Commission issued new regulations which require that interstate motor carriers of passengers provide clear and readable information to their passengers detailing the amount of liability which the bus company assumes in the event that checked baggage is lost or damaged. The regulations also require that the bus companies must provide baggage insurance of at least $250 per item.

A pending proceeding, Ex Parte No. MC-97, Investigation into Practices of Motor Common Carriers of Property in Residential and Redelivered Shipments, instituted on the Commission's own motion, reflects our continuing interest and responsibility to protect the private individual or small business person. In this case, the Commission is investigating the propriety and lawfulness of additional charges for the transportation of property originating at or destined to private residences, camps, schools, churches and other similar locations.

The Commission is well aware that its efforts to protect consumers will be for naught unless its regulations are properly enforced. In order to determine how well the Commission is enforcing its regulations and how such enforcement might be improved in the future, the Commission undertook two studies known as the Fitzwater and Smith reports. The Smith report studied the Commission's compliance program for 1972.

This report was based on a relatively large sample of violations by motor carriers to the Interstate Commerce Act, with related Acts and with the Commission's rules and regulations in furtherance of the national transportation policy. The study was based on a large but incomplete sample of cases reported to the Bureau of Enforcement for subsequent action. While the study is only a statistical outline of the methodology of the disposition of the involved cases, it statistically demonstrates the difficulty the Commission encounters in attempting to obtain compliance from regulated and unregulated (primarily motor) carriers.

Among the numerous findings made therein, the following conclusions may be drawn from the report: The majority of investigations are not initiated by the Commission but are in response to outside complaints which the Commission is obliged to investigate. The U.S. District Attorneys to whom cases are referred for in-court prosecution frequently will settle for minor out-of-court settlements at monetary levels below that the Commission had already found to be unsatisfactory. As a partial result of this lack of serious cooperation, the Commission has become overly dependent on its own out-of-court civil forfeiture settlement procedures. Absent such cooperation from other Federal enforcement agencies, the Commission was unable to impose civil forfeiture settlements which exact more than a small percentage of the illegally obtained revenues resulting in fines too low to act as a deterent to further violations. Therefore, many carriers

may become habitual violators viewing their fines as merely a cost of doing business. Such complex cases as rate, tariff and credit violations are left without a proper forum for enforcement action (95% of such counts discovered were not prosecuted).

As stated in the report, the study was designed for internal use to allow the Commission to form a coherent policy for enforcing those cases with national or serious regional impact. The report primarily recommends that the Commission redevelop its national enforcement policy in light of its limited fiscal resources and statutory resources.

The Commission's 89th Annual Report to Congress, at pp. 60-65, briefly outlines the Commission's enforcement activities during 1975. It points out that consumers have been aided by enforcement actions against unlawful activities concerning household goods movers, adequacy of passengers service, carrier handling of shipments claims, maintenance of proper insurance for protection of the public, transportation of small shipments, and the distribution and utilization of freight cars. In addition, the enforcement program included court injunctions, criminal penalties, civil forfeitures, and contempt citations against violators. A summary of the more important enforcement actions is contained in the Annual Report.

The primary recommendation of the Fitzwater report is that the Commission should be reorganized to place all compliance functions in a single office. Specifically, it recommends that

an Office of Compliance can be established comprising the Bureaus of Enforcement and Operations and the Section of Audit of the Bureau of Accounts. Recognizing the importance of effective enforcement in protecting the public interest, this proposal is currently being considered by the Commission.

The Commission is continuing to seek ways to expand public and consumer participation in the regulatory process,and with this aim in view, it announced, on October 31, 1975, its decision to create an Office of Public Counsel. The recently enacted Railroad Revitalization and Regulatory Reform Act legislated an Office of Rail Public Counsel into being, and the Commission has now endorsed legislation that would make the legislated Public Counsel responsive to all modes and to all parts of the Act. The benefits of such an office to the consumer were summarized by Commissioner Corber in his address entitled "Public Counsel at the Interstate Commerce Commission" delivered before the Association of Interstate Commerce Commission Practitioners on October 31, 1975.

"Public interest", in this context, would clearly embrace the full social, economic, and governmental impact of Commission decisions. Also, the Commission on its own initiative, will direct participation of the Public Counsel as a party. The Public Counsel will be afforded all the rights of parties and may intervene in, or petition for the institution of, proceedings before the Commission at such times and in such manner as is

appropriate under the Commission's rules. The Fiscal Year 1976, supplemental budget request for the Office of Public Counsel would provide for initial staffing of 30 positions and an annualized funding level of $2 million, a substantial portion of which could be used to contract with experts and consultants to assist in developing and presenting evidence in the public interest.

The Commission recognizes that if it is to serve the public effectively, it must continually engage in a process of internal reform. In his remarks entitled "Internal Reform: A Progress Report", delivered before the Association of Interstate Commerce Commission Practitioners on October 27, 1975, Commissioner O'Neal summarized recent development in the area of consumer responsiveness.

The Commission's efforts outlined above, indicate that the Commission recognizes that the word "consumer" embraces not only shippers and passengers, but also the end user of transportation services. The general public has an interest in the maintenance of a sound transportation system because its economic well-being depends upon whether goods and services are available to it at reasonable cost. The Commission's actions demonstrate that it considers the consumer interest to be a major factor in, if not co-extensive with, the "public interest" and the "national interest" as stressed in the Interstate Commerce Act.

Attachments

LISTING OF ATTACHMENTS

Attachment 1 - Remarks of Virginia Mae Brown, Commissioner Before the Women's Traffic Association of Jacksonville, Florida
Release date: May 2, 1975

Attachment 2 - Letter to Senator Magnuson & Senator Moss Dated February 17, 1976. (This attachment is available in the General Counsel's Office)

Attachment 3 - Remarks of Robert J. Corber, Commissioner Before the Movers' & Warehousemen's Association of America (41st Annual Convention)
Release date: March 18, 1976

Attachment 4 - Statement of Alfred T. MacFarland, Commissioner Before the House Committee on Interstate and Foreign Commerce, Subcommittee on Transportation and Commerce on Oversight of Amtrak Service
Dated: March 11, 1976

Attachment 5 - Remarks of Robert J. Corber, Commissioner Before the Fifth Annual Transportation Law Seminar - Association of ICC Practitioners
Dated: October 31, 1975

Attachment 6 - Remarks of A. Daniel O'Neal, Vice Chairman Before the 5th Annual Transportation Law Seminar - Association of ICC Practitioners
Release date: October 28, 1975

ATTACHMENT 1

For release: May 2, 1975

Remarks of

Virginia Mae Brown, Commissioner

Interstate Commerce Commission

Before the

Women's Traffic Association

of Jacksonville, Florida

The Ramada Inn

May 2, 1975

Jacksonville, Florida

I am pleased to be here in Jacksonville today and to be given the opportunity to speak to your kick-off luncheon in honor of National Transportation Week.

Jacksonville, I am told, is the largest incorporated developed area in the Western Hemisphere, covering an area of more than 800 square miles. You are served here by 3 major railroads and Amtrak, 16 major truck lines, 6 airlines, and 2 intercity bus lines. You have port facilities which handle over 15 million tons of freight annually.

It is no wonder that a good transportation system is important to your city. And it is also a major factor in the economic development of your State, which is at the "end-of-the-line," so to speak, geographically.

We are involved in an extremely complicated industry affecting every segment of this Nation's economy and every individual citizen. For that reason, transportation and the Interstate Commerce Commission's regulation of it are topics frequently covered by the news media -- and rightly so. Of late, there has been much discussion in the press and on TV of the deregulation of this industry. Sometimes, the reporter or commentator is well informed but, more often, because of the complexity of the subject matter, the news items are inaccurate or simplistic. And, human nature being what it is, there is a tendency to perpetuate inaccuracies. Nevertheless, the Commission welcomes constructive criticism, whether from the carriers, the shippers, the consumers -- or even the press! We are continually looking at our procedures and reevaluating our decisions in an effort to preserve and improve what is already the most efficient and sound transportation system in the world.

The issue of regulation versus deregulation is not an all or nothing one, as some would have you believe. While it is true that over-regulation could stifle competition and service, the effect of total deregulation most certainly would accomplish the same end. Total deregulation would cause the demise of the smaller carriers, and would result in little or no service to our smaller, less-populated communities. Larger carriers able to survive in such an atmosphere would all vie for the cream of the traffic, and the transportation of less-lucrative traffic and the service to smaller communities would be ignored. Competition would be reduced and monopolies would blossom. The rule in the market place would be freight rates based on whatever the traffic would bear.

The Commission believes that a middle ground approach between over-regulation and total deregulation is a better one: that is, more regulation where it appears to be needed and less regulation where it does not. We are an arm of Congress established by it to serve and to protect the public as well as to regulate the various modes of transportation under our jurisdiction. We must carry out our statutory obligations in the light of that Congressional intent.

When the Commission determines that there is a need for a change in our statutory authority, we submit legislation to that effect for Congressional consideration. In view of all the recent deregulation furor, it might surprise you to know that our proposed legislative changes have not always been in the direction of more regulation. We also have requested authority for less regulation in areas where we have felt it necessary or advisable.

I will give you a few examples in several important areas of concern today to illustrate my point that, at times, there is a need for more regulation or for less regulation to achieve and improve our transportation system.

I The Economy

The Commission has submitted legislation to Congress to obtain additional jurisdiction over transportation-related conglomerate holding companies.[1/] The reason for this is that an ever-increasing percentage of the regulated carriers are being controlled by conglomerates, the interests of which are diverse and not necessarily transportation-oriented. The potential for harm to a corrier in such circumstances is great. Its assets may be drained off by the holding company, it may be denied the opportunity to make desirable investments and, through questionable intercompany transactions, the holding company may improperly increase the carrier's costs.

The Commission recently exercised its jurisdiction in an innovative manner in order to stem the distressing deterioration of track and equipment that saps the ability of the Nation's railroads to serve the public adequately. In a recent rail general increase proceeding,[2/] the Commission allowed a 10-percent increase in rail rates and charges, but subject to a new condition. The railroads were permitted to apply the first 3 percent of that increase to the increasing costs of

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1/ S. 2406 and H.R. 11092.

2/ Ex Parte No. 305, Nationwide Increase of Ten Percent in Freight Rates and Charges, 1974, decided June 3, 1974 (not printed), presently pending in court.

materials and supplies, but the remaining 7 percent was to be applied to deferred maintenance and to capital improvements.

In another case,[3/] the Commission promulgated new rules to protect investors in carrier securities. Those rules require, among other things, that the carrier provide a prospectus containing detailed information about the securities offering.

While all of the above involved increased regulation of one form or another, other Commission actions have involved lessened regulation. In 1971, the Commission prescribed new rules governing motor carrier general increases or restructuring of rates.[4/] These rules were designed to reduce the time needed to dispose of motor general increases, while achieving greater uniformity and reliability of cost data submitted by the carriers, and to notify the public and the carriers of the minimum evidence required to render a decision. Now, motor carriers are better able to respond more rapidly to economic changes, and the public is better protected from unnecessary and, possibly, arbitrary rate increases.

II Energy

Rising fuel prices have had a substantial effect on carriers, shippers, and consumers alike. Last year, motor-carrier operations were disrupted briefly due to the inability of owner-operators to fully absorb the higher fuel costs. The Commission, in order to alleviate the situation, ordered the establishment of a

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3/ Securities Regulations - Public Offerings, 344 I.C.C. 168 (1973).

4/ New Procedures in Motor Carrier Rev. Proc., 340 I.C.C. 1 (1971).

fuel surcharge[5/] and required that motor common carriers pass through to the owner-operators the increased revenues therefrom. This rapid and innovative action averted a potentially serious transportation slowdown, which threatened to spread nationwide. Without the Commission's regulatory machinery, this problem could not have been solved so rapidly.

In another area, the Commission lessened its regulation by establishing criteria under which irregular-route motor carriers could eliminate gateways[6/] and, thus, provide direct service between authorized points of service involving the tacking of separate grants of authority. It is expected that this action will save millions of gallons of fuel yearly.

Since 1967, we have consistently recommended legislation to Congress to amend the Interstate Commerce Act to enable the Commission to exempt certain transportation from regulation upon a finding that the regulation is no longer necessary to carry out the National Transportation Policy and that such regulation would serve little or no public purpose. Such authority would permit the Commission, either on its own or by request, to exempt areas of presently regulated transportation in the interest of fuel conservation or, for example, to achieve carrier or consumer economies.

5/ Special Permission Order No. 74-2525, Emergency Fuel Surcharge for Line-Haul Transportation Charges & Other Charges -- Motor Common Carriers, decided February 7, 1974 (not printed).

6/ Gateway Elimination, 119 M.C.C. 530 (1974).

III Consumerism

The word "consumer" does not appear anywhere in the Interstate Commerce Act. Nevertheless, our Act's reason for being has always been acknowledged to be the protection of the consumer as the principal factor included in the phrases "public interest" and "national interest," which do appear there.

The consumer's full range of rights cannot be exercised until he or she is aware of those rights and can seek effective redress when violations of those rights occur.

The Commission has allocated a large share of its resources to providing the consumer with the information and assistance required. Formal and informal guidance is available from our headquarters in Washington, D. C., and also from our field offices located throughout the country, where we have a growing number of transportation consumer specialists.

The Commission's regulatory activities in the consumer area have been significant and varied. Some of our areas of concern include household-goods moves, loss and damage claims, rail and motor passenger movements, and assurance of adequate service for small shipments and small communities in less-populated areas of our country.

We have adopted a comprehensive set of regulations, covering nearly every phase of the household-goods moving process.[7/] Among other things, these rules

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7/ Practices of Motor Common Carriers of Household Goods, 111 I.C.C. 427 (1970).

impose on the carriers the obligation to furnish each household shipper an information booklet prepared by the Commission's staff which explains the details of a household-goods shipment transaction. More recently, we have required household-goods carriers to provide prospective customers and the Commission with reports outlining their past performances.[8/] In this way, each individual or family planning a move will be able to make a more informed judgment when selecting a mover. Also, the household-goods movers should be motivated to continually improve their performance records.

Currently, only the courts have the authority to adjudicate loss and damage disputes. And, unfortunately, the attendant costs of a lawsuit often prohibit all but the larger claims from being adjudicated. To remedy this inequity, as an outgrowth of a 1972 rulemaking proceeding,[9/] the Commission requested authority from Congress to adjudicate loss and damage claims, subject to court review, thus providing the public with an administrative forum now lacking to resolve these disputes.

Meanwhile, the Commission has been assisting informally in the handling of loss and damage complaints involving both household moves ond freight shipments. A new Claims Branch has been established within our Bureau of Operations, Section of Insurance, to deal with the large volume of complaints we receive each yeor in this area.

8/ Practices of Motor Common Carriers of Household Goods, 119 M.C.C. 585 (1974).

9/ Loss and Damage Claims, 340 I.C.C. 515, 721.

In recent years, the Commission has been receiving a growing number of complaints concerning service on less-than-truckload or small shipments. We have developed a special advisory notice, which is provided to the public without charge, to aid shippers needing transportation of small quantities of freight. The shipper is informed of available assistance within the Commission, the alternative carrier service existing to transport his small shipments, and the carriers' responsibilities concerning the handling of such shipments. This program, in effect for several years now, has helped to improve the service on less-than-truckload quantities.

Within our Bureau of Traffic, Section of Rates and Informal Cases, a consumers' forum has been established, which provides the public with advice on the interpretation tariff schedules and other informal assistance of that nature.

All of these special programs, we feel, will aid the consuming public, the shippers, and the carriers, and will make our national transportation system even more responsive.

In summary, while some of the Commission's policies and decisions move in the direction of more regulation and some toward less regulation, it is quite apparent that both options must be left open if the Commission is to be responsive to the public need in these rapidly changing times.

* * *

I would like to change now to the subject of women and, more particularly, to the opportunities available to women at the Interstate Commerce Commission and in the Federal Government generally.

The Federal Government was a pioneer of equal employment opportunities for women. Back in 1883, the Civil Service Act established a merit system under which women were able to compete in civil service examinations on the same basis as men. The Classification Act of 1923 specified equal pay for equal work regardless of sex. More recently, Executive Orders have reiterated the prohibition against discrimination in Federal employment. And, in 1972, Congress strengthened the Civil Service Commission's powers by authorizing it to order remedies or actions by Federal agencies to ossure equal employment opportunities. Now Federal agencies are required to submit affirmative action plans providing the programs of training and education needed to enable employees to compete for advancement to positions of greater responsibility.

While the Government's overall policy has been equal opportunity for women, until very recently little was done to implement that policy in the area of high-level positions. In 1970, 77 percent of the female white-collar workers in Government were employed at grades GS-1 to GS-6, and only 1 percent held jobs graded GS-13 and above. Moreover, women constituted only 5 percent of the total Federal employees at the grade GS-13 in that year.

A 1971 survey indicated a significant increase in the hiring of women for mid-level positions -- from 20.7 in 1970 to 23 percent in 1971. In 1972,

President Nixon appointed 54 women to high-level government positions of grades GS-16 and above, 35 of which were the first women ever appointed to the particular position in question. In 1974, there were 23 additional high-level appointments. And, as you know, this year, President Ford appointed Mrs. Carla Anderson Hills as Secretary of the Department of Housing and Urban Development. She is only the second woman in history to hold a Cabinet-level post.

The Interstate Commerce Commission has slightly over 2,000 employees in all. Three-fourths of them, or approximately 1,500, work at our headquarters in Washington, D. C. Of that 1,500, almost half are women. There are approximately 176 women in mid-level grades GS-7 through GS-12, and 20 women in the higher-level grades GS-13 through GS-17. Of that latter group of 20 women, 13 are attorneys, 3 are in the management field, 3 are in the consumer and liaison fields, and 1 is an accountant.

We now have our first woman Deputy Director at the ICC, who is the head of the Section of Rates in the Office of Proceedings; and also, our first woman head of the Budget and Fiscal Office. The Chief of the Section of Litigation in our General Counsel's Office and two of our Administrative Law Judges are women.

While our statistics on the employment of women may not be the most impressive of the various Federal Government agencies, we have made strides -- and I know that we will continue to do so.

There are tremendous job opportunities at the Commission. We are constantly looking for qualified applicants, especially those with transportation experience. In my opinion, the ICC is a great place to work -- for women, as well as for men.

ATTACHMENT 2

February 17, 1976

Honorable Warren G. Magnuson
Chairman
Committee on Commerce
United States Senate
Washington, D. C. 20510

Honorable Frank E. Moss
Chairman
Subcommittee for Consumers
Committee on Commerce
United States Senate
Washington, D.C. 20510

Dear Sirs:

I am pleased to respond on behalf of the Interstate Commerce Commission to the request of February 4, 1976, asking that we describe 25 significant steps which we have taken in the past 10 years to enhance the lot of the consumer.

You asked for our reply by February 16, but since that is a holiday, Mr. Cohen of your staff has agreed that the submission of this information by today would be satisfactory. Our list of significant consumer-related programs and actions is enclosed. We have not attempted to arrange this list in the order of importance of the individual items.

The "American consumer" is usually thought of as the person at the very end of the production and distribution chain, and in all our actions we do our best to keep his welfare in mind. We believe that the actions which we have taken to improve the quality of surface transportation regulation will be to his benefit--some directly, and others indirectly by improving the quality of the transportation service relied upon by those responsible for the manufacture or distribution of the goods which he buys. Since our task is to regulate transportation, we tend to think of the "consumer" as the purchaser of transportation services. You will understand, then, why the primary thrust of some of the actions described

may appear to be directed primarily at resolving the transportation problems of manufacturing and marketing companies rather than at providing direct monetary or service benefits to the man in the street.

A number of the consumer assistance activities listed are ongoing programs which have existed longer than the 10-year period mentioned in your letter. However, during that period, each of these programs has been substantially enlarged, or its focus has been redirected, in order to meet the present public demand that effective and meaningful consumer assistance be made available on a regular basis.

We believe that our efforts to provide consumer access to the Commission have been quite successful. This Commission, along with 14 other Federal agencies, is the subject of a multi-phase consumer complaint handling study by the Office of Consumer Affairs of the Department of Health, Education and Welfare. In phase one of the evaluation, HEW's private consultants, selected on a competitive-bid basis, rated the Commission as among the best in the effectiveness of its consumer complaint handling, finding that of the 24 functions studied, the ICC rated excellent in ten functions, satisfactory in 11, and unsatisfactory in only three. The three problem areas which we considered minor in relation to our overall complaint handling procedure, have all been corrected.

Sincerely yours,

(Signed) George M. Stafford

George M. Stafford
Chairman

Enclosure

CONSUMER-RELATED PROGRAMS AND ACTIONS OF THE INTERSTATE COMMERCE COMMISSION

1. Consumer Information. - The Commission's Public Information Office was given expanded duties several years ago and now functions as our Consumer Information Office. It maintains a "hot line" telephone service, with a toll-free long distance number, which any member of the public requiring information about the Commission or about a transportation service performed by a carrier regulated by the Commission may use. The staff of the Public Information Office is often able to provide immediate answers to the inquiries which are received. If questions prove to be too technical or too difficult, that staff has been specially trained to refer these inquiries to the bureau or office of the Commission in which the necessary experts are located. The "hot line" calls have approached a volume of 300 per day. The Consumer Information Office maintains liaison with many other Federal, State and local consumer protection agencies and regularly issues a consumer bulletin which informs these organizations of all Commission actions of possible public interest.

2. Consumer Assistance. - One of the principal activities of the Commission's field staff is to aid the users of transportation service by directing them to carriers able to meet their needs or by investigating service complaints and correcting service deficiencies by informal persuasion or, if necessary, by the institution of formal proceedings. A few years ago, the position of "Consumer Assistance Specialist" was established, and 10 trained specialists and 17 assistants have been employed and assigned to consumer assistance activities at key Commission field offices throughout the country.

3. Freight Car Service. - The Commission's field staff is continually on the alert to identify and correct car-shortage problems, resulting from the most part from peak-period demand for equipment. Where necessary, orders are issued requiring the dispatch of cars to areas experiencing a shortage. The Commission sets rental and usage charges for cars (per diem and demurrage rates) with a view toward encouraging their efficient use, and it has supported the railroads in their attempts to assure that cars returned to them after use are properly cleaned by the consignee and thus ready immediately for reuse.

In the 1960's, the [illegible] broad investigation to develop current information concerning the adequacy of freight car ownership and the need for prescribing regulations to alleviate the recurring problem of shortages in freight car equipment. As a consequence of this inquiry, the Commission in 1970 ordered the railroads to observe a number of car service regulations and approved a railroad car ownership formula. In addition, the railroads were required to collect and file data with the Commission regarding their car ownership each year. These two actions have focused public attention on the extreme importance to shippers and consumers of an adequate freight car supply.

The Commission's car service program, designed to assure an adequate freight car supply, is a particularly vital function where the small shipper is concerned. A typical example is the small country grain elevator operator who must compete with the large terminal elevators which are able to ship in multiple-car quantities. Without the Commission's constant assistance, a small businessman such as this would be hardpressed to receive the freight car supply which he needs to remain competitive with the larger grain dealers.

The Commission is apprehensive lest one of the provisions contained in the recently enacted Railroad Revitalization and Regulatory Reform Act of 1976 (P. L. 94-210) may impair its ability to assist one class of small shippers in obtaining the freight car supply necessary for its survival. Section 310 of the new law, which amends Section 1(12) of the Interstate Commerce Act, provides that railroads may assign their coal cars to unit-train service. We are seriously concerned whether this will prevent us from being able to assure that the smaller mine owners receive an adequate supply of cars to meet their needs.

4. Tariff Interpretation. - The Commission's Section of Rates and Informal Cases, located in its Bureau of Traffic, is designed to provide rapid response, often over the telephone, to resolve tariff interpretation questions. The small businessman who is not able to employ a full-time traffic manager or to maintain a traffic department often has questions concerning the proper interpretation of tariffs filed with the Commission by regulated carriers. The proper resolution of these questions can mean a substantial difference in the amount of freight charges which such a shipper may have to pay. A staff of professional tariff interpretation experts is available at the Commission to provide immediate answers to questions which such transportation users may find it necessary to pose.

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5. Assistance on Household Moving. - For many years the Commission has had in effect a comprehensive set of regulations governing almost every aspect of the movement of household goods. This is the area in which the non-professional and unsophisticated individual most commonly comes into contact with the common carrier transportation industry, and it is clearly the area in which the greatest degree of public protection is required. Among the other requirements imposed by the Commission on the household goods carriers is the obligation that they furnish to each prospective shipper of household goods an information book prepared by the Commission's staff and explaining all the details of a household goods shipment transaction. The Commission also requires the household goods carriers to provide to their prospective customers detailed information concerning the carrier's recent experience in providing quality service. This report must include information on the accuracy of the carrier's cost estimates, the timeliness of its pickup and delivery service, and the speed with which it handles the processing of loss and damage claims.

6. Small Shipments. - The problem of the movement of small shipments came into the limelight in the early 1960s as a result of the general curtailment of less-than-carload rail service and the publication of relatively high less-than-truckload motor carrier rates. As a consequence of numerous complaints regarding the transportation of small shipments, the Commission early in 1967 established an Ad Hoc Committee of three Commissioners to coordinate the development of policy in the small shipments area. On November 30 of that year, the Committee issued its report discussing the nature of the problem and recommending a number of actions to provide needed relief. The Committee's recommendations, which have been implemented, included the suggestion that the Commission seek legislative authority to allow it to require the establishment of through routes and joint rates by motor carriers (such legislation has still not been enacted, although the Commission has continued regularly to support it); an additional emphasis on the performance of service and the fulfillment of common carrier obligations as a part of the Commission's enforcement program; increased efforts to obtain timely cost and traffic data in rate proceedings to assure profitable operations for carriers and more equitable rates for shippers; a centralized Commission responsibility to deal with service complaints and to coordinate the staff's efforts in assisting transportation users to obtain better small shipment service; and the publication of advisory bulletins containing information useful for the shipper of small package freight.

7. Joint-Line Motor Carrier Service. - Most motor common carrier, providing service under certificates granted by the Commission are authorized to operate within or between specified areas of the United States. Thus, it often happens, if service is to be provided between, for example, a metropolitan area such as New York City and a rural area of the midwest, that two or more motor carriers must join to perform the operation. They may do so, and often agree to do so, under published through routes and joint rates. These arrangements are permitted, but are not required, under the Interstate Commerce Act. Several years ago it appeared that a concerted effort was being made by a number of motor carriers to cancel these arrangements. The Commission, having received protests from the connecting carriers and from the shippers who were served by them, found that these cancellations should not be permitted and required that the established joint rates be continued. The effect of this and similar action has been to provide the small shipper with continued access to its sources of supply and its markets.

8. Service Restrictions. - Several years ago the Commission noted that motor carriers subject to its regulation were seeking to avoid the transportation of traffic which they found undesirable by placing service restrictions in their tariffs. While such restrictions assumed many forms, they were often aimed at limiting service on small shipments and on traffic that either originated at or was destined to points in rural or lightly populated areas. To counteract this trend and to reestablish the duty and obligations of these common carriers to provide service, without restriction, the Commission adopted regulations requiring that tariffs of common carriers conform strictly with their operating authorities in keeping with their fundamental obligation to serve the general public. Thus, no provision may be published in a tariff by a motor common carrier which results in restricting the scope of that carrier's service to something less than the operating authority which has been granted to it by the Commission.

9. C.O.D. and Similar Shipments. - Several years ago a noticable pattern began to develop whereby many regulated motor carriers began adopting tariff provisions which precluded the delivery of both C.O.D. shipments,, in which the carrier collects the costs of the goods delivered, and freight-collect shipments, in which only the freight charges must be collected from the consignee. After an extensive investigation, the Commission concluded that the public interest required that common carriers continue to provide these services. In a related matter, the Commission is now conducting a formal investigation resulting from

many complaints that carriers were refusing to provide deliveries at private residences and were refusing to redeliver shipments which could not be delivered on the first attempt because the consignee was not at home.

10. Insurance and Loss and Damage Claims. - Through its Section of Insurance in the Bureau of Operations, the Commission assures that the public is protected against losses stemming from motor vehicle accidents involving regulated carriers or from the loss of, or damage to, the cargo which they transport. In 1974, the minimum protection for personal injury and property damage liability claims for motor carriers was required to be increased by about 400 percent. The minimum protection for cargo loss and damage was increased 150 percent in 1968, and another increase of 100 percent is to be effective on July 1 of this year. In 1972, the Commission issued regulations which governed the process of acknowledging and paying claims for cargo loss and damage. Although the Commission does not have authority to adjudicate disputed cargo claims, it attempts to provide the greatest amount of assistance possible in this area. A Claims Branch has been established in the Section of Insurance for the purpose of assisting those with damage claims against the carriers which we regulate.

11. Procedural Improvements. - In the mid-1960's, because of a sharp increase in applications for motor carrier authority, the Commission in a General Policy Statement announced that it would utilize the simplified procedures to process these cases where feasible. Unlike oral hearing procedures, which require the personal attendance of the parties or their representatives, under modified procedure a matter may be more speedily concluded based upon the filing of the evidence in the form of affidavits or verified statements. The greater use of this procedure has enabled the Commission to render speedier decisions, thus reducing the expenses of the parties supporting or opposing the application. These procedures can be particularly helpful to the small businessman seeking to enter the regulated trucking field, for he can obtain a quick decision with a minimum of legal and other expenses.

Improvements have also been made in the area of motor-carrier rulemaking. The Commission has promulgated regulations which spell out clearly the kind of evidence which must be submitted by the carriers in order to sustain a request for a general rate increase. These regulations had the objectives of shortening the time necessary to dispose of motor carrier general rate increase proceedings, achieving greater uniformity and reliability in data submitted, and providing adequate notice to carriers and the public of the minimum evidence we deem necessary to render a decision in furtherance of the public interest.

12. Tariff Inspection. - The Commission, about two years ago, established a Consumer Protection Unit in its Bureau of Traffic charged with the responsibility for examining carrier rate proposals which could have an adverse effect upon the consumer -- particularly the small company which does not maintain its own professional traffic department and which is not in a position to obtain the necessary legal services to file formal protests to rate increases which might be adverse to its interests. Here, again, the Commission is concerned that this program may be in jeopardy because of a provision of Section 202 of the Railroad Revitalization Act which places limitations upon the Commission's power to suspend rate proposals on its own motion.

13. Tariff Update. - One of the problems seriously affecting small shippers has been the difficulty of determining rapidly and correctly the proper rate that should be charged for particular transportation services. Because of rapidly escalating costs of doing business, the Commission has found it necessary to permit the carriers it regulates to raise their charges across the board in what are commonly called "general increase" rate proceedings. In order to do this quickly and effectively, the carriers file

increase authorized by the Commission to effect the rate changes allowed. This means that a user of transportation services may have to check several such master tariffs to determine what the legal rate for a particular service may be. Beginning in 1970, the Commission has directed the carriers to incorporate into existing rate schedules these general increases authorized by it. It may be noted that the recently enacted Railroad Revitalization Act clearly affirms the Commission's authority to impose such a requirement upon the carriers which it regulates.

14. Availability of Tariff Information. - Following its consideration of a number of complaints from shippers and other users of transportation service concerning difficulties encountered in receiving copies of carrier tariff publications, the Commission, in 1972, issued regulations which provide that subscribers to tariff publications must be provided with copies of those publications no later than the time that copies are transmitted to the Commission for official filing, that first class mail service must be provided to any subscriber requesting and offering to pay for it, and that all carriers and tariff publishing agents must furnish copies of any of their publications to any person requesting them.

15. Public Counsel. - The Commission is continuing to seek ways to expand public and consumer participation in the regulatory process, and with this aim in view, it announced, on October 31, 1975, its decision to create an Office of Public Counsel. The new office will be free to participate as a party in adjudicatory or rulemaking proceedings before the Commission where it decides that it may be of assistance to the Commission in determining the public interest.

"Public interest," in this context, would clearly embrace the full social, economic and governmental impact of Commission decisions. Also, the Commission on its own initiative, will direct participation of the Public Counsel as a party. The Public Counsel will be afforded all the rights of parties and may intervene in, or petition for the institution of, proceedings before the Commission at such times and in such manner as is appropriate under the Commission's rules. The Fiscal Year 1976 supplemental budget request for the Office of Public Counsel would provide for initial staffing of 30 positions and an annualized funding level of $2 million, a substantial portion of which could be used to contract with experts and consultants to assist in developing and presenting evidence in the public interest.

Uncertainty over whether the recently enacted Railroad Revitalization Act would include provision for a public counsel's office within the Commission resulted in the Commission's delaying the implementation of its decision in this respect. The new rail bill creates an Office of Rail Public Counsel in the Commission, with the Director to be appointed by the President. Thus, it will be necessary for the Commission to coordinate and consolidate this

[illegible] established by the Commission last Fall.

16. The Productivity Measurement Conference. - This conference, held November 26, 1974, addressed the general subject area of carrier productivity in a way which would allow carriers, shippers, and other interested parties to recognize the issues and find ways in which they could work together to improve carrier productivity -- to the benefit of the consumer. The printed proceedings provide a unique textbook resource for understanding both the problems, the measurements and the conflict in objectives. The book is available free of charge and has been distributed widely.

17. Quality of Rail Passenger Service. - The Commission has adopted regulations governing rail passenger service which require, among other things, efficient and accessible reservations services, expeditious schedules and on-time performance, clean trains, adequate meal service, functioning heat and air conditioning, areas for nonsmokers, and baggage services. A Passenger Service Branch in our Bureau of Operations monitors passenger complaints and works with Amtrak and the other passenger carrying railroads to improve their performance. The Commission has recently concluded nationwide hearings in which it sought the comments of interested public officials and train riders in its continuing effort to insure that the American public has a quality rail passenger service.

18. Smoking on Buses. - In 1971 the Commission issued regulations requiring smokers to occupy separate sections of motor buses operating in interstate or foreign commerce where smoking is otherwise permitted by the carrier and by law.

19. Liability for Checked Baggage on Buses. - In 1974 the Commission issued new regulations which require that interstate motor carriers of passengers provide clear and readable information to their passengers detailing the amount of liability which the bus company assumes in the event that checked baggage is lost or damaged. The regulations also require that the bus companies must provide baggage insurance of at least $250 per item.

20. Adequacy of Motor Bus Service. - In October 1975, the Commission, following extensive field investigations, instituted an investigation into the adequacy of the broad scope of services offered by motor common carriers of passengers. The proposed rules being considered are aimed at substantial consumer improvements and include: requiring more responsive information to passengers concerning ticketing and schedules; high priority and security for baggage; a requirement for terminals or minimum bus-stop facilities for passenger comfort and safety; requirements for notices of schedule changes and a reservation system; a requirement for operable cooling and heating systems; and special assistance for handicapped, disabled, blind, and elderly passengers.

21. Preservation of Rail Service on the CNJ. - In 1973 it became apparent that the Central Railroad Company of New Jersey, which was then and still is in bankruptcy, would be unable to continue to provide service because of a serious cash shortage. The reorganization court directed that all of the CNJ service within the State of Pennsylvania be terminated and that several branch-line operations in New Jersey be shut down. The Commission's staff, working with the trustees of the CNJ and also with the trustees of the Lehigh Valley Railroad, were able to arrange for the Lehigh Valley to take over the essential CNJ operations in Pennsylvania and thus preserve rail service for many communities which otherwise would have been left without it. The Commission's staff also was able to negotiate arrangements with shippers on certain of the threatened New Jersey branch lines under which they agreed to pay increased charges for the service which they received provided the railroad would continue their branch lines in operation. Expedited procedures were developed to permit the filing of tariffs to enable the continuation of these vital services.

22. Northeast Rail Restructuring Process. - One of the most significant consumer-oriented programs which the Commission has undertaken came as a result of the reorganization of the bankrupt eastern railroads pursuant to the Regional Rail Reorganization Act of 1973. The Act created the Commission's Rail Services Planning Office and gave it specific responsibility to assure that members of the public were adequately represented and that their views were made known during the course of the restructuring process. The Director of the Rail Services Planning Office, in order to carry out this mandate, created an Office of Public Counsel which took the lead in informing the general public of the consequences of railroad restructuring and assisting interested persons in preparing testimony for public hearings held by RSPO. The office held over 50 hearings, many of them extending over several days, and heard and summarized for the benefit of those planning the new rail system the testimony of several thousand individual members of the public.

23. Assistance to Branch Line Users. - During the course of the restructuring of the northeast railroads, and particularly following the issuance of the Final System Plan by the United States Railway Association, the Commission's Rail Services Planning Office has provided personalized assistance to those individuals located on rail branch lines which are not to be included in the new rail system to be operated by the Consolidated Rail Corporation. This assistance takes the form of providing cost and revenue figures and advice as to how to compute the cost of possible subsidy payments as well as assistance for the individual users and communities in negotiations which they are conducting with the bankrupt railroads and with the management of ConRail.

24. Alternate Uses for Abandoned Rail Lines. - Whenever a proposal is presented for the abandonment of a railroad line, the Commission's environmental staff performs an analysis to determine what potential non-railroad use the property involved might have. Railroad rights-of-way, of course, are normally long and narrow strips of land, with limited prospects for alternative uses. However, they have been found useful for hiking, bicycling, and skiing trails where they lie in rural areas. Railroad properties in urban areas, obviously, are susceptible to a number of other uses. The information developed by the Commission's environmental staff is considered in determining whether, as a condition to permitting the abandonment of rail lines, the railroad should be required to offer its property for sale to public bodies or other organizations capable of using the land and structures for useful public purposes.

25. Recycling Waste Products. - In 1971 the Commission adopted regulations, aimed at enhancing the environment, which provided for the filing of applications by motor carriers for a special certificate authorizing them to transport waste products for recycling or reuse in furtherance of recognized conservation and pollution control programs. A special procedure was adopted for authorizing this transportation which eliminated the usual application procedure for a certificate of public convenience and necessity. The intention was to permit motor carriers, returning to their home base with empty equipment, to handle low-rated commodities, such as waste paper or broken glass, which might very well otherwise not have been transported at all, but which can be recycled for other uses. Unfortunately, the Commission's legal authority to take this action has been challenged in the Federal courts, and the matter has been remanded to the Commission for further consideration.

United States Senate

WASHINGTON, D.C. 20510

February 4, 1976

Honorable George M. Stafford
Chairman
Interstate Commerce Commission
Washington, D.C. 20423

Dear Chairman Stafford:

The Committee on Commerce is currently reviewing regulatory activities as part of its oversight responsibility. While we are investigating the shortcomings of regulatory activities, it is also important that we compile an accounting of the successes of regulation. Thus we are interested in obtaining from you some information concerning those agency administrative, rulemaking, or enforcement activities which you feel have had a significant, tangible benefit for the American consumer.

Specifically, we would like you to submit, by Monday, February 16, 1976, a paragraph concerning each of the 25 most significant steps you have taken during the past ten years to enhance the lot of the consumer. Should you have any questions about the scope or substance of this request, please feel free to speak with either Ed Cohen or Ed Merlis of the Commerce Committee staff at 224-9321.

Sincerely yours,

Warren G. Magnuson

Ted Moss

WARREN G. MAGNUSON, Chairman
Committee on Commerce

FRANK E. MOSS, Chairman
Subcommittee for Consumers

WGM/FEM:ect

ATTACHMENT 3

For Release
March 18, 1976

REMARKS

of

ROBERT J. CORBER
Commissioner

INTERSTATE COMMERCE COMMISSION

REGULATION OF HOUSEHOLD GOODS MOVERS

Before The

MOVERS' & WAREHOUSEMEN'S ASSN. OF AMERICA

41st ANNUAL CONVENTION

Del Webb's TowneHouse
Phoenix, Arizona

March 18, 1976

REGULATION OF HOUSEHOLD GOODS MOVERS

The society of America is increasingly a mobile one. We travel freely from one corner of the land to the other. Indeed, the economic and social fabric of the nation is so much an integrated whole that we can follow opportunity wherever it beckons with confidence that familiar and trusted underpinnings of our lives will not be substantially different regardless of location. The result is people changing jobs, moving residences, going from the farm to the city or vice versa, and, of course, taking their household goods with them.

This rhythm of movement is characterized by daily repetition in the business - your business - of movers of household goods. Indeed you are directly involved with a significant aspect of the American way of life. You are put squarely in touch with the American consumer for it is the individual householder, as a general rule, who participates in this mobility and there is no middleman between you and the consumer on the move. Your association with the American consumer is thus as close as that of any commercial activity in the nation and closer than any other transportation enterprise. It is, therefore, not surprising that you

were among the first to confront the growing movement for consumer protection.

Household Goods Regulations

It was in 1967 that Commission regulations governing the transportation of household goods were first revised with an eye toward the newly emphasized needs of shippers of household goods. In 1970 there were major revisions in the regulations as a result of proceedings in Practices of Motor Common Carriers of Household Goods, Ex Parte No. MC-19 (Sub No. 8), 111 M.C.C. 427 (1970). These revisions, which became known as the Sub No. 8 rules, were designed, as the Commission then said, "to improve mover-customer relations through full disclosure of the obligations of the parties each to the other and better understanding between the carrier and the shipper before the household goods movement begins."[1/] The revisions adopted a definition of reasonable dispatch with notation on the bill of lading of the agreed delivery time; provided for weighing of shipments to be observed by the shipper; prescribed a new, more informative form of vehicle-load manifest; promulgated new forms and rules regarding estimated charges; modified claims handling; prohibited requirements for signed releases by shippers; and changed pickup and delivery practices in regard to

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1/ 111 M.C.C. at 433, emphasis added.

notice of delay, among other revisions.

The mandated changes were based in part upon a 1968 survey of household goods shipments. It showed a relatively high percentage of late deliveries (up to 32% for private accounts) and over or under estimates of charges exceeding 10% in a majority of shipments.

Since that time regular reports have been made to the Commission by the carriers. I am pleased to note very encouraging improvements in performance. The latest reports reflect that late deliveries have been cut more than one-third and erroneous estimates of charges have been reduced. Although there is room for further improvements, particularly with respect to estimating accuracy, there are many more satisfied customers now than there were then. Earlier this month nationwide Better Business Bureaus reported that mover complaints are down to less than one percent of the total received by such Bureaus and that 83 percent of shipments are performed either without any claims for loss or damage or with claims under $50.[2/]

On the basis of experience a number of changes have been made in the Sub 8 rules. Recently the Commission

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2/ Traffic World, March 8, 1976, p. 28

approved substitution of drivers' weight certificates for vehicle load manifests (Ex Parte No. MC-19, Sub 26). Even more recently in Sub 20 the Commission decided to postpone prescription of uniform shipping documents and to revise limitation of liability rules. It adopted a rule requiring carriers to assume liability for all articles, except perishables, transported or held for storage-in-transit, subject to released rates. Thus, prior notice of items of extraordinary value may not be required. In addition, replacement cost is to be the measure of damages. Finally, ten days' advance notice must be accorded the shipper of conversion from storage-in-transit to permanent storage and the shipper shall have 9 months from the date of conversion to file claims. The report in that case was served on March 1, 1976 for effectiveness April 23.

Compliance and Fitness Flagging

Without question there is stringent regulation of household goods movers. Although it is necessary protection for your customers - the mover-consumer - it can pose compliance problems for carriers. Some have already found their operating authority questioned as a result of violations of the regulations. You thus have an interest in two important facets of enforcement activities of the

Commission. One is the current status of the compliance program and the other is the effect which violations have on the licensing activities of the Commission.

(a) The Commission's Compliance Program

The raison d'être of the Commission's compliance program is to see that its regulatory mission is effectively and fairly carried out. It is the means by which an orderly transportation system is maintained and unfairness to shippers and consumers is avoided. It is, in short, the ultimate key to the whole purpose of regulation. It follows that it has transcendent importance in the regulatory scheme of things.

These are the reasons that the compliance program is subjected to almost constant review. In the early part of last year Chairman Stafford caused a survey of the program to be made. As a result of that survey he directed a Blue Ribbon Staff panel to review the program and make recommendations for any indicated changes.

In October of last year the staff panel reported and recommended changes. It concluded that our enforcement activities place insufficient emphasis on matters of significant economic impact or national import, that there is not enough cohesion of effort between the investigation and prosecution stages of enforcement and that the information base of the system should be improved, among others.

It made specific recommendations for reorganization of the Bureaus of Enforcement and Operations.

There are relatively strong differences of view within the bureaus of the Commission regarding these conclusions and recommendations. The underlying details have been submitted by the Commission to the Oversight Subcommittee of the House Interstate and Foreign Commerce Committee. There will be review by Congress as well as the Commission. I would not venture to predict what changes will grow out of these reviews. I will emphasize that whatever is done will not weaken enforcement efforts. These will continue with perhaps renewed emphasis on matters of greater economic significance and such administrative modifications as needed to strengthen the forces for bringing violators to account. Moreover it is worth underscoring that enforcement is not confined to motor carriers but includes all the modes regulated by the Commission and shippers implicated in carrier transgressions.

(b) The Commission's Fitness Flagging Procedure

This brings me to another facet of enforcement that can have particular economic significance to carriers and to their shipper-customers in need of service. This is the established practice of the Commission to withhold issuance of new authority even though a need for service may be shown, if a carrier's fitness is in issue in other

proceedings. I refer to the so-called fitness flagging procedure.

In understanding this procedure it is important to bear in mind that there are two kinds of fitness under the Act. One is the fitness, willingness and ability of the carrier properly to perform the service proposed. This may be called operational fitness. The other is the fitness, willingness and ability of a carrier to conform to the statute and requirements, rules and regulations of the Commission under the statute. It may be called conformity fitness to distinguish it from operational fitness. The flagging procedure involves only conformity fitness.

Congress informed the Commission in Section 212(a) of the Act how to proceed in cases of suspension and revocation of operating authority for violations of the Act. Section 212(a) requires notice and hearing with proof of willful violations for suspensions plus a compliance period for revocations. There are no specific provisions of the Act relating to withholding of licenses where there are pending allegations in another proceeding going to the conformity fitness of the carrier. Whatever limitations may exist as to these situations must arise by implication from relevant provisions of the Act, from provisions of the Administrative Procedure Act or from the Constitution.

The Commission commenced to deal with those situations in 1959 and 1960 when the fitness flagging procedure was established. It has since been explained in Annual Reports as well as specific decisions of the Commission. What emerges from these sources is that when allegations are pending in a proceeding, such as an investigation for revocation of outstanding certificates, a flag will be figuratively raised for the affected carrier and licenses will not be issued in application proceedings for that carrier until the question of conformity fitness is resolved. The procedure is designed to promote efficient administration under the Act by avoiding the necessity of trying and retrying the question of conformity fitness in every application proceeding of a carrier and, instead, allowing the question to be resolved on the basis of one fitness investigation.[3/] It also serves important enforcement objectives.[4/] It would be anomalous to issue certificates or permits to a carrier at the same time that serious questions of conformity fitness are pending against the carrier. To put on blinders in that situation, by ignoring the fitness questions, would be an abdication of enforcement responsibilities.

3/ See, Eagle Motor Lines, Inc., Inv. and Revoc. of Certif., 117 M.C.C. 72, 77-78 (1972).

4/ Ibid.

The effects of this procedure are serious. It can result in delays in issuance of operating authority that are costly to carriers and injurious to shippers in need of service. Yet it involves important responsibilities of the Commission for fitness of carriers and for maintenance of the integrity of the enforcement program.

The lawfulness of fitness flagging is being adjudicated in Court. See, North American Van Lines, Inc. v. I.C.C., 386 F. Supp. 665 (D.C. N.D. Ind. 1974). In the North American decision, which dealt with only some aspects of the lawfulness of fitness flagging, the Court acknowledged the need for the procedure by stating that it would "not be reasonable" to expect the Commission to ignore a current fitness investigation when it determines whether to issue a license in an application proceeding. Nevertheless questions were raised as to whether the procedure does not require formal rulemaking by the Commission, whether it does not deny due process by allowing the flag to be raised on the basis of ex parte allegations in the fitness investigation, and whether it lacks standards by which to measure the propriety of applying the procedure in any given case. The Commission is at this time reviewing these questions itself and may well alter the procedure significantly. The Courts may provide guidance as a result of such litigation as the North American case whatever action is taken in the meantime by the Commission.

Conclusion

What this review shows is that household goods carriers are subject to exacting regulatory requirements unsurpassed by other types of carriers. The purpose of the regulation is to bring better service to the public and, onerous as it may be, it has improved relations between household goods movers and their customers. Still the restrictive nature of the regulation is such that if there were any support among motor carriers for deregulation as distinguished from reform one would certainly expect to find it here. I am led to believe the oppdsite is true.

You know the value of regulation to you and your customers. It gives assurance of adequate service, providing incentives as well as coercions to that end, and maintains the system for equality of treatment of shippers. It has produced a transportation system without equal in the world.

Proposals, such as the Motor Carrier Reform Act, would change all this by removing vital parts of rate regulation and entry control. They would alter fundamental purposes of regulation by eliminating the very means by which adequate service and equal treatment of shippers is brought about. They are retrogressive. No matter how

burdensome economic regulation is, these proposals cannot be acceptable. They would create worse problems for carriers and their customers than any posed by regulation.

ATTACHMENT 4

STATEMENT OF
ALFRED T. MacFARLAND, COMMISSIONER
INTERSTATE COMMERCE COMMISSION
BEFORE THE
HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE
ON
OVERSIGHT OF AMTRAK SERVICE

March 11, 1976

Mr. Chairman, Members of the Subcommittee:

I appreciate the opportunity to be here today to testify on behalf of the Commission concerning our oversight of the adequacy of Amtrak service. As you are aware, the Commission was authorized by section 801 of the Rail Passenger Service Act of 1970 (45 U.S.C. 641) to "prescribe such regulations as it considers necessary to provide safe and adequate service, equipment, and facilities for intercity rail passenger service." Pursuant to this mandate, the Commission has embarked on a comprehensive program to ensure that Amtrak service is maintained at an adequate level. A detailed description of the Commission's activities in this area, and our in-depth assessment of the present status of Amtrak service will be provided to the Congress in our Annual Report on Amtrak, which is due by March 15.

Here we will attempt to summarize briefly the actions taken by the Commission and the effect that they have had on the level of Amtrak service. We should emphasize at the outset our belief that it is important, given the substantial amounts of Federal funds that have been invested in Amtrak, that the Government ensure that Amtrak service is maintained at a level that is likely to attract new ridership. We have attempted to achieve this goal through our section 801 jurisdiction, while

at the same time, providing exemptions and other relief to Amtrak when it appears that our regulations will impose an inordinate burden in specific circumstances.

To carry out our mandate, we prescribed regulations to assure the adequacy of rail passenger service in Ex Parte No. 277 (Sub-No. 1), Adequacy of Intercity Passenger Service. These regulations, which appear at 49 CFR 1124 and which were appended to the Commission's 1975 Annual Report on Amtrak, provide specific standards and controls over such matters as reservations, on-time performance, condition of stations, temperature control, cleanliness, equipment, baggage handling, and condition of cars and coaches. They also establish a Commission-supervised complaint procedure. Moreover, they outline a procedure for the granting of exemptions from the regulations where the carrier shows good cause.

Subsequent to the promulgation of these regulations, the Commission embarked on two other proceedings pursuant to its section 801 authority. In Ex Parte No. 277 (Sub-No. 2), Adequacy of Intercity Rail Passenger Service - Track, the Commission is considering the promulgation of regulations concerning the maintenance of adequate trackage used in providing intercity rail passenger service, and in Ex Parte No. 277 (Sub-No. 3), Adequacy of Intercity Rail Passenger Service (1975 Investigation), the Commission instituted a further inquiry into the quality of intercity rail passenger service for the purpose of determining whether additional regulations or recommended legislation is appropriate. This latter investigation included public hearings in nine cities in order to permit the broadest public participation. In December 1975, the Administrative Law Judge who presided at the hearing issued his recommended report,

which contains extensive recommendations for changes with respect to all areas covered by the investigation. Exceptions to that report now have been filed, and after the Commission has studied these exceptions, it will take whatever actions appear necessary, including further amendment to the adequacy regulations.

The Commission seeks improvement in rail passenger service through the formal and informal enforcement of its regulations. In 1974, the Commission established a Passenger Service Branch which handles passenger complaints and supervises field inspection and investigation activities. During 1975, the Commission received more than 8,000 passenger complaints, and the staff of the Passenger Service Branch worked closely with the Amtrak staff to resolve many of these complaints. The relationship between the two staffs has had a positive effect on Amtrak's attention and response to the public. The Commission's staff also conducts numerous field inspections and investigations in order to assess the level of compliance with the adequacy regulations.

Where deficiencies appear, the Commission makes every effort to work cooperatively with Amtrak to effect voluntary compliance with the regulations. During 1975, a much higher level of cooperation has been achieved. However, where informal resolution of violations has not been possible, the Commission has utilized the formal procedures provided under section 801(b) of the Rail Passenger Service Act. Specifically, the Commission has referred four cases to the Justice

Department to enforce Amtrak compliance with adequacy regulations and to prevent discontinuance of certain trains in the Northeast Corridor.

Broadly speaking, the Commission's adequacy of service regulations and compliance efforts thereunder are designed to encourage Amtrak to operate trains that are comfortable, convenient, and reliable. We believe that this effort is important. In the last six years, the Federal Government has provided Amtrak with substantial funds in order to encourage rail passenger service, and energy efficient and environmentally sound means of transportation. In 1975 alone, Federal grants and loans supplied 72.1 percent of Amtrak's funds. Given this substantial investment, it is essential that some controls be provided so that a level of service is maintained which is sufficient to make rail service attractive to the traveling public.

This is what we attempt to achieve with our regulations, and we believe that Amtrak service is beginning to show improvement. In 1975, there were definite improvements in Amtrak's processing and resolution of passenger complaints. There were also some improvements with regard to on-time performance. Moreover, this was the first year of considerable improvement with respect to deployment of additional new and leased cars in keeping with our regulations (regulation 14), requiring sufficient equipment to meet public demand.

Concerning the cost to Amtrak of complying with our regulations, it would appear that such cost is marginal. Furthermore, such costs are unavoidable if a reasonable level of service is to be achieved. It is

important to emphasize that the Commission recognizes that its requirements must be reasonable and that when they impose an unduly heavy cost burden on Amtrak, relief must be given. If Amtrak believes it cannot economically comply with some required service, it can petition the Commission for an exemption, and the Commission will grant such a petition, if justified.

The following three examples demonstrate how the Commission's exemption procedure works:

1. Amtrak's petition filed April 30, 1975, assigned as Finance Docket No. 27903, sought exemption from Regulations 11 and 13(a). Regulation 11 requires stations to be open enough time before departure and after arrivals to permit passengers to buy tickets and check or retrieve baggage. Regulation 13(a) requires checked baggage facilities to be open 20 minutes before departure time. Amtrak demonstrated that the considerable expense of maintaining an open station at Brookhaven, Miss., was not justified in view of low patronage. The savings to Amtrak was significant and the public was not unduly inconvenienced; thus the petition was granted.

2. Amtrak's petition filed May 2, 1975, assigned as Finance Docket No. 27904, also sought exemption from Regulations 11 and 13(a) as they pertain to the rail passenger station at Fulton, Ky. The station is served daily by Trains Nos. 58 and 59 operating between Chicago, Ill. and New Orleans, La. Factors taken into consideration for this exemption were the annual cost of providing the necessary service at the station (annual personnel costs approximated $48,000), the arrival and departure times of the trains, and the average passengers entraining and detraining at Fulton. The Commission granted the petition, finding that an unmanned station would permit significant savings for Amtrak without unduly inconveniencing the public.

3. Amtrak petition filed May 14, 1975, assigned as Finance Docket No. 27915, sought exemption from Regulation 3(e) as it pertained to Trains Nos. 300 through 308 operating between Chicago and St. Louis, Mo. Regulation 3(e) requires that advance reservations be made available on at least fifty percent of all trains to meet normal demand of passengers traveling 200 miles or more. Factors taken into consideration for this exemption were that reservations at the time of petition were not provided, the average cost

to provide each reservation was approximately $1.43, and that the annual cost to Amtrak would be more than $500,000. In view of the significant expense and relatively limited utility of reservations on the involved trains, the petition was granted.

The above examples demonstrate that the Commission's adequacy regulations are flexible in that they attempt to achieve a reasonable balance between passenger needs and the cost of meeting those needs.

The long-term effects of the adequacy regulations and Amtrak's efforts toward improved service will have a favorable effect on revenues. Amtrak has demonstrated that it is possible to make inroads into the bus and air market in the Northeast Corridor. New equipment is coming into service with dramatic accommodation improvements on board trains. These improvements, coupled with station improvement programs, will have a favorable impact on ridership.

In conclusion, rail passenger ridership has increased since Amtrak commenced operations in May 1971. The Commission's regulations are designed to continue this increase by helping to ensure a reasonable and adequate level of service for the rail passenger. The cost to Amtrak in complying with the Commission's regulations is a necessary expenditure

which produces the benefit of greater ridership through the return of satisfied passengers and improved public acceptance of rail passenger service.

This concludes my prepared remarks. I and my staff will be glad to answer any questions you might have.

SUPPLEMENTAL STATEMENT

Although the Commission has not had sufficient time to fully consider all the ramifications of the Department of Transportation proposed "Amtrak Improvement Act of 1976," I, however, would like to make some individual observations. I would like to address one part of the proposed amendment which impacts directly on the Commission's jurisdiction. This is section 2 of that proposal which authorizes motor carriers of passengers, under certain circumstances, to operate both joint-line services with Amtrak and single-line services not containing an Amtrak connection, without any economic regulation by this Commission or by any State agency.

Under this proposal if Amtrak offers to establish a through service with motor carriers authorized to perform the motor segment of the proposed service and all such carriers turn the proposal down, then Amtrak may offer to establish the same service with a carrier that has any regular route passenger motor carrier service. Such carriers could not only engage in the through service, they could also engage in single-line service unrelated to Amtrak over the motor segment of the route. All of this service could be performed without any economic regulation by any State or Federal agency.

I suggest that before this major deregulation step is taken it needs to be clearly established that such an action will best serve the public interest. It does not appear to me that such a showing has been made. To begin with, there are several features of the proposal that seem particularly inappropriate.

For example, it does not appear that the public interest would be served by authorizing the unregulated motor carrier transportation of passengers that does not involve a through route with Amtrak. Such transportation could have a substantial derogatory effect on the existing motor carrier passenger system without major countervailing benefits to Amtrak. The transportation would be completely free of any public interest requirements of the Commission concerning adequacy of service or reasonableness of rates. Moreover, the carriers involved would not have the common carrier obligation to serve intermediate points.

The result of this provision on a nationwide basis could well be the substantial deterioration of the passenger motor carrier system. To avoid this, section 2 should at least be limited to the provision of service to passengers having an immediately prior or subsequent movement by rail on the through route established with Amtrak.

Another defect in the proposal is that there is no provision for regulating the transportation under the through route once it is established. This means that Amtrak, which has

sole authority to determine the terms and conditions of the through route offer, can make an unreasonably low offer to its competing motor carriers and when they are forced to refuse it, Amtrak can make the same offer to a noncompeting motor carrier. Upon establishment of the service with the noncompeting carrier, the through route arrangement can be adjusted to bring in a reasonably rate of return. In order to avoid this destructive competitive practice, regulation of the rates charged under these through route arrangements must be maintained.

DOT's proposal has the potential to weaken seriously the interstate passenger motor carrier system and thus to undermine the responsiveness of the present balanced system. Under the existing regulatory scheme passenger motor carriers perform in a competitive environment, but one in which they are protected from over competition, thus allowing them to fulfill their common carrier obligation to serve all points that they are authorized to serve, including smaller towns and communities. The Commission has long recognized that the maintenance of bus service to small towns having available no other means of public transportation is of considerable importance to the public. It can be expected that Amtrak would not use its through route authority to ensure the maintenance of this service but rather to improve its own competitive position at the expense of the motor carriers that are responsible for this service. The result could well be a

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diminution in the ability of the motor common carriers to serve their less profitable markets caused by the weapon given Amtrak in the more lucrative areas.

Plainly, if greater encouragement is to be given to the development of joint rates and through routes with Amtrak, it should be done by means of legislation which enables this regulatory agency to prescribe, or at least carefully supervise, these new joint rates and through routes to ensure that they are in the public interest. This authority would allow the Commission to prescribe intermodal joint rates and through routes that would expand Amtrak ridership without unduly threatening the reliability of the existing motor carrier system.

ATTACHMENT 5

REMARKS OF

ROBERT J. CORBER
Commissioner

INTERSTATE COMMERCE COMMISSION

PUBLIC COUNSEL AT THE INTERSTATE COMMERCE COMMISSION

Before the

FIFTH ANNUAL TRANSPORTATION LAW SEMINAR

ASSOCIATION OF INTERSTATE COMMERCE COMMISSION PRACTITIONERS

Hotel Washington
Washington, D. C.

October 31, 1975

PUBLIC COUNSEL

AT THE INTERSTATE COMMERCE COMMISSION

The Interstate Commerce Commission is not merely an umpire in a ball game. A number of years ago Commissioner Clyde Aitchison said that administrative agencies

> ... are not expected merely to call balls and strikes, or to weigh the evidence submitted by the parties and let the scales tip as they will. The agency does not do its duty when it merely decides upon a poor or nonrepresentative record. As the sole representative of the public, which is a third party in these proceedings, the agency owes the duty to investigate all the pertinent facts, and to see that they are adduced when the parties have not put them in ...

Another of the giants among the former members of the Commission placed an even greater emphasis on the public role of the agency. Former Commissioner Joseph B. Eastman thus said:

> An administrative tribunal has a broader responsibility than a court. It is more than a tribunal for the settlement of controversies. The word "administrative" means something. The policies of law must be carried out. If in any proceeding the pertinent facts are not fully presented by the parties, it is the duty of the tribunal to see to it, as best it can, that they are developed of record. A complainant without resources to command adequate professional help should be given such protection.

How can the agency properly fulfill this extra dimension of responsibility that was apparent to these profound students of regulation as early as several decades ago? A sufficient answer then may have been an alert staff at the Commission ready to supply the information needed or lend a hand to the "complainant without resources." Since then, however, the caseload of the Commission has multiplied while the staff has grown very little. In addition, the crises appear larger, the required information more complicated, and the cases less manageable. For example, a number of years ago a motor carrier general increase in rates could be resolved on the basis of

operating ratios alone. Today it involves, in addition to operating ratios, return on capital, cost of debt, sum of money and other complex considerations. The point is that it would be unfair today to expect the staff, with an already heavy workload, to see that all relevant facts are properly developed on each significant record and that underrepresented parties have the necessary professional assistance. More than that, staff responsibility for evaluation of the positions of each of the parties -- those asserting private interests as well as those purporting to serve the public interest -- could be incompatible with a specific obligation of this nature.

Moreover, we are in the era of emphasis on representation of interests normally absent from administrative agency proceedings, i.e., consumers, small shippers, remote communities, environmentalists (in lesser degree) and others. It is too much to expect that the myriad of considerations that spring from these various interests would be fully developed on the basis of an adversary system in which the center stage is occupied largely by the stronger carrier and shipper entities who have concerns of their own to protect.

There has not been an absence of suggestions for meeting this situation. They have included more emphasis on consumer needs, greater economic analysis, less use

of adjudicatory procedures, a near advocacy role for triers of facts, and reform of various kinds, including the ultimate in exasperation -- deregulation. When all of these ores have been mined, sifted, sluiced, and picked at, the most persistent glimmer of gold appears to be the proposal for a public counsel. Broadly speaking, the function of the office would ideally be aimed at almost precisely what Commissioners Eastman and Aitchison said administrative agencies should do, namely, (1) see that the public side of the record is developed and (2) assist interested persons without resources for adequate professional help.

History of Public Counsel at ICC

The use of public counsel at the ICC has a long and honorable history. In its annual report of 1903 the Commission answered critics of its employment of special counsel in proceedings involving important public interest questions. The Commission stressed the public interest aspects of its proceedings and said:

> ... When a complaint involving a question of general public interest is brought to our attention ... the investigation is for the public benefit and should be conducted at the public expense. ... It often happens that the most inexpensive, most effective, and the most expeditious method is to proceed in the pending case by appointing someone to appear at the expense of the Government in the public interest. (pp. 33-34).

The Commission added that it was necessary to make these appointments in order to fully develop the facts. It said:

> Broadly speaking, it may be said that whenever this Commission has notice by formal complaint, or otherwise, of an apparent infraction of the act to regulate commerce which ought in its opinion to be examined, and in the nature of things will not be or can not be without the assistance of the Government, we deem it our duty to proceed with as full an investigation of the matter as the time and means at our disposal will permit. (p. 34).

This program continued for a number of years. In 1910 the rail carriers of the nation sought general rate increases on the ground of revenue need. The Commission found revenue need had not been shown but promised that if future operations indicated this finding was incorrect the carriers could renew their request. Interestingly, one of the counsel in that case representing an association of shippers was none other than Louis Brandeis, later to be named to the Supreme Court. In 1913 the carriers felt that operations showed a need for revenue and they, therefore, petitioned to reopen the proceedings for the purpose of granting a request for a 5% general increase. This resulted in the so-called Five Percent Case, 31 I.C.C. 351 (1914). When the carriers filed, the Commission determined

that there should be an investigation to ascertain whether carrier revenues could not be increased without raising line-haul rates. There was to be a review of all rail operating practices to see if revenues could not be increased in passenger fares, elimination of free freight services (including free transportation), improvements in efficiency and the like. The carriers could not be expected to develop the needed information and shippers would probably not do so either. Accordingly the Commission resorted to its then well-established practice of appointing special counsel to represent the public interest. It appointed Louis Brandeis. After hearing in which special counsel participated and review of briefs, including those of special counsel, the Commission decided to grant some of the increase requested and to require elimination of some practices found to be wasteful.

Not much more was heard of this concept until 1940 when some consideration was given to institutionalizing it with a full-time public counsel instead of special counsel in selected proceedings. It is also given some consideration in the 1941 Final Report of the Attorney General's Committee on Administrative Procedure.

The idea was revived in each year from 1961 through 1964. However, requests for funds were denied by Congress.

In 1973 special counsel was appointed for Ex Parte 270 under arrangements reminiscent of those with Louis Brandeis in 1913. In 1974 an Office of Public Counsel was established in the Rail Services Planning Office by the Regional Rail Reorganization Act.

In this year of 1975 the idea stems from recommendations of the Blue Ribbon staff panel appointed by Chairman Stafford in January. That proposal has been adopted in principle by the Commission after thorough review of reports of Ad Hoc Committees of Commissioners appointed for the purpose.

Functions of the Office

As I see it, the principal function of public counsel would be to assure that records of formal proceedings before the Commission contain all the relevant and material information needed for the Commission to reach an informed result consistent with the public interest. In this respect the term public interest must be broadly defined to include all interests significantly affected by a decision. This would include the interests of carriers, shippers, labor, consumers and the public generally. It embraces the full social, economic and governmental impact of Commission deliberations. The ultimate purpose

is to enable the Commission properly to apply statutory standards, including the National Transportation Policy, to the infinite variety of problems presented for decision.

A good example of a situation in which public counsel could perform invaluable services could be general revenue rate cases where information regarding wasteful practices, prospects for productivity gains, and inefficiencies in service or operations could be developed more fully than presently under the adversary system. In adequacy of service cases the problems of small or remote shippers, which are often unrepresented, could be given greater perspective and meaning by public interest counsel participation. There are many proceedings in which a change in carrier or Commission rules or practices is sought but the evidence presented is insufficient to warrant the change. Since the Commission may, by law, act only on the evidence available to it (primarily from the record) it is powerless to grant relief in these situations. Public counsel could help assure that results are not governed by inadequate or incomplete information.

To fulfill this function of properly rounding out the record, it may also be necessary, in my view, to authorize public counsel to assist persons without resources for adequate professional help. This could include small public bodies such as municipalities, towns, rural

communities and the like. I think it may further be desirable to have this authority embrace shippers and carriers, small in size, with a demonstrated inability to have counsel or other professional assistance.

The role of public counsel is not to manufacture issues or encumber the administrative process with trivia. Placing the emphasis on the need of the Commission for all the information required to reach results fully consonant with the public interest should avoid any such misuse of the functions of this office.

Independence of Counsel

It is important that public counsel have independence. The question, however, is how much independence? Legislation is pending which would go so far as to have the office completely independent of the Commission with appointment by the President and confirmation by the Senate.

There can be no doubt that public counsel should be secure in taking positions unpopular in the Commission as well as outside the agency. Nevertheless the purpose of the office is to see that the public interest is properly found and served by the Commission. In other words, the office is part of the process of

determining the public interest. It is not independent of that process. It is, therefore, best made a part of the Commission rather than an adversary of the agency. It should have complete independence within, but not be isolated from, the Commission. This requires some independent rights as to budget and assured tenure for the holder of the office.

Meaning to Practitioners

There are many implications for practitioners from development of a public counsel function. I will not attempt to cover all of them, even if I knew at this stage what all of them are or could be.

Perhaps the first change to be anticipated is that no longer can you simply prepare a case to meet the evidence of the applicant or the petitioner or, if you are on the other side, the respondent or defendant. You must learn to think in terms of the public interest case of public counsel in addition to the moving or defending party. In addition, you can expect public counsel to have the effect of sharpening evidentiary requirements. In many situations that counsel will see that gaps in evidence, whether in the supporting or opposing cases, are filled. Depending upon which side you are on this

will add burdens or remove frustrations arising out of the other party's evidence.

Overall, it is my view that public counsel will improve your practice at the Commission. He or she will be able to stimulate better procedure in individual cases as well as generally, upgrade evidentiary requirements, and focus attention on standards for judging the merits of a case that should strengthen the quality of decision-making. There should be increased confidence in the administrative system and, therefore, increased confidence in you as practitioners in that system.

Conclusion

Institution of the office of public counsel is a modern twist to old practices of the Commission and an effort to strengthen the concept of public interest under the Interstate Commerce Act. It will improve the administrative process and enhance the role of the practitioner in that process. It deserves your support.

ATTACHMENT 6

FOR RELEASE: October 28, 1975

INTERNAL REFORM: A PROGRESS REPORT

REMARKS OF
A. DANIEL O'NEAL, VICE CHAIRMAN
INTERSTATE COMMERCE COMMISSION

BEFORE
5TH ANNUAL TRANSPORTATION LAW SEMINAR
ASSOCIATION OF INTERSTATE COMMERCE COMMISSION PRACTITIONERS

HOTEL WASHINGTON
WASHINGTON, D. C.

OCTOBER 27, 1975

Two years ago I had the honor of addressing this seminar. At that time, I discussed the prospects of deregulation from three perspectives - the National Transportation Policy as expressed in the preamble to the Interstate Commerce Act, the then expected provisions of the Administration's "deregulation bill", and my own thoughts on the problems of regulation which seemed to bring focus to the issues impelling change.

Briefly summarized, my trusty crystal ball forecasted the following problem areas:

1. Do specific restrictions on the commodities and routes of regulated carriers constitute an undue restriction on competition?

2. How has ICC entry policy affected competition among carriers and the ability of the public to choose between services and to sustain pressures for reduced rates?

3. Does the amount of effort expended to examine individual rate adjustment proposals eliminate carrier flexibility and competition; if so, is this kind of regulation

worth the price?

4. Do rate bureaus function to maintain artificially high rates and over-compensate sound carriers to protect the inefficient?

5. Is innovative regulatory policy rendered impossible by bureaucratic delay?

6. To what extent can ad hoc case decisions be made within the broader reaches of overall policy objectives?

7. Has regulatory policy taken a carrier oriented view to the exclusion of a more comprehensive transportation needs approach? A local approach rather than one which is regional or even National in scope?

8. Are regulatory agencies, as a whole, passive and reactive in nature rather than active and innovative? Is procedural due process a euphemism for regulatory lag?

9. Are regulatory agencies which come under criticism capable of confessing error, when they are in the wrong, instead of retreating into a struthious institutional deference?

At the time I noted that to recognize the existence of these questions was not enough because the fact that they were and are being raised and discussed imposes upon the Commission, as well as upon all who are concerned and knowledgeable about regulation, a special obligation. And that is to examine carefully the extent to which the agency, or if need be, the Congress, should bring about significant reforms in the regulation of surface transportation.

Further, I expressed the view that there was, within the ICC, acknowledgement of the need to come to grips with these issues in a forthright manner; that there is increasing recagnition that if we fail to make regulation produce the benefits required by the public in our time, we will have inadvertently laid the groundwork for drastic adjustments which could cause unforeseeable disruptions in the economy and affect other aspects of our society in a way that could be costly to many segments now making positive contributions to our Nation's transportation.

In the intervening two years since that speech, there have, of course, been a number of significant developments in transportation regulation. It is not my

purpose today to detail the many legislative proposals before Congress which seek to reshape the structure of regulation and the regulatory agencies; nor is it my intent to trace the development of the Northeast Rail Reorganization. Rather, I would like to share with you today some observations on what the ICC has done internally to meet the regulatory challenges represented by some of the questions raised with you two years ago.

Since other speakers will address themselves to proceedings developments, my remarks will focus on what have become known as our Blue Ribbon Panel recommendations.

In an effort to participate fully in the move for reform and modernization of the regulatory process, Chairman Stafford established in January of this year a Regulatory Reform Panel comprised of five senior members of the Commission's staff. The Panel was chaired by an experienced Administrative Law Judge familiar with all nuances of the regulatory process. The charter for this committee called for a "no holds barred" review of the heart of the Commission's operation - the processing

of cases. This specific orientation to case processing was designed to permit the rapid development of significant interim recommendations subject to implementation, while recognizing the need for longer term, extensive study to review the total regulatory reform potential.

The Panel produced a 189 page report containing 61 specific recommendations broken down into the following four basic sections.

1. Our case processing mechanisms

2. A compilation and identification of Commission past activities regarding the major problems of these times.

3. A series of recommendations relating to potential reform within our Office of Proceedings.

4. Substantive and procedural recommendations for significant regulatory and legislative change.

Twenty-two of the recommendations were primarily of a nature involving internal management activities. In an effort to assure that the response to these

was as rapid as possible and to improve the overall efficiency and effectiveness of the Commission, Chairman Stafford gave a priority review of these matters which came within his jurisdiction as Chairman.

Seventeen of the twenty-two recommendations were approved, two disapproved, and three identified as requiring additional study. The principal recommendation from this group was that the Commission establish a permanent staff committee for policy and planning, varied in disciplines, and comprised of expert members chosen for their integrity and vision. Assuming requisite final Congressional approval of requested appropriations for the creation and funding of this unit, the functioning of this group should permit the Commission to maintain a higher awareness of potential future problems and provide the capability for improved anticipatory action. It should help the agency immeasurably to respond to the questions noted earlier that are still very much outstanding.

Chairman Stafford then referred the remaining Blue Ribbon Panel suggestions to an ad hoc committee composed of Commissioners Hardin and Corber and myself. We were also asked to consider certain recommendations by the Federal Energy Administration;

the areas declared by the President on July 10 to "deserve very careful attention." Those areas may be briefly summarized as follows:

1. Increased use of cost/benefit analysis on major programs and issues.

2. Comprehensive and specific review of where delay occurs and ways to reduce that delay.

3. Study and revise procedures to be more responsive to the consumer.

4. Consider the fundamental changes for deregulation where it is feasible. Where alternative actions are feasible, ask yourself "Is regulation better?"

Using these four "attention areas" as a guide, let us take a look at where these Blue Ribbon Panel suggestions have gone so far.

1. COST/BENEFIT ANALYSIS

The Commission has approved the clearly salutory recommendation to include greater economic analysis in the Commission's decision making function, with increased reliance on the Bureau of Economics. But since the President's proposals seemed to go beyond this recommendation to an actual quantification of cost/benefit impact in major actions by the Commission, we have been studying a number of approaches to an appropriate methodology.

One thing is at once clear. There are inherent difficulties in attempting to affix a number to the various particular benefits which might flow from regulation. Similarly there are a number of problems associated with an attempt to quantify the costs of regulation, notwithstanding the seeming ease with which some of our critics seem to "throw out" figures, ostensibly just to get our attention, as some have lately been admitting.

Nevertheless, under our Ad Hoc Committee's direction, the Bureau of

Economics is studying separate approaches to:

o Explicitly stated cost/benefit analysis application to the board role of ICC regulation in the economy.

o Its application to individual cases decided by the Commission.

One approach we are considering is a broad-range conference to develop ideas on the application and use of cost/benefit analysis in individual cases decided by the Commission. Hopefully this type of conference would bring together those divergent voices of the theorists and academics who have either damned us or praised us, in an appropricte forum, to "get it all out on the table" once and for all. I should mention that there is some opposition to the conference approach and it has not yet been formally presented for approval so some other device for collecting the various views may be employed. However we do it, it is time to face the questions whether we can quantify the costs and benefits of regulation and, if so, what is the measure? If the theorists have

been trying to get our attention, they now have it. We have heard their conclusions. Now let us examine their evidence.

II. REGULATORY DELAY

Regulatory lag, of course, is the function of many factors including the amount of paper that must be processed by the agency, the procedures available for processing it, the difficulty of the cases, the manpower available and the productivity of that manpower.

The Commission has undertaken a number of measures that we see as having a direct impact on reducing both the input of paper and the time required to process paper before the agency.

First of all, last June Chairman Stafford initiated a crash backlog catchup program recommended by the Panel and the Committee to move out operating rights cases by using every available attorney, including those not ordinarily writing such cases.

Rulemaking proceedings are anticipated shortly to explore a standardized

format for verified statements in proceedings involving applications for operating authority, and to explore cases-in-chief changes in the procedures for collecting evidence in motor carrier cases. Most practitioners do prepare their cases well. But all members of the bar should recognize that the better and more complete the case is presented, the quicker it can move through the pipeline. Hunting for hard evidence amidst pages of rhetoric is counterproductive for all concerned.

Although incomplete at this time, efforts are being made to cut down on the number of cases that get both Review Board and Division review. Also we are seeking ways, both internally and statutorily, to reduce the levels of review within the agency in order to make cases administratively final in a more timely manner.

An effort will be made to limit Commissioner personal docket cases to those of unusual significance.

Certain prospective licensing employing rulemaking where necessary will be relied upon in appropriate situations to reduce the time for consideration of cases while giving

due consideration to the underlying issues.

The Commission has given its support to recommendations which would ease some securities issues and facilitate mergers for more relatively small motor carriers, at the same time reducing the amount of paper those carriers and the Commission must struggle with.

Short form orders will be used by Review Boards to handle routine operating rights modified procedure cases.

Rulemaking is under consideration to reduce the size and increase the ease of handling petitions for reconsideration. Specifically we are considering a requirement for a specification of error and a page limit.

For its own part, the Commission will impose internal time limits on every phase of the decisional process.

And finally, as you all are undoubtedly aware, we are studying a proposal to relax or eliminate entry control requirements for brokers.

III. CONSUMER RESPONSIVENESS

At the outset I should note that the President's own consumer advisor has given the ICC some high marks for its responsiveness to consumers. As you well know, we have in recent years developed rules and regulations speaking to the adequacy of service by household goods carriers, Amtrak, and most recently, the bus lines. The agency has maintained a surveillance over small shipments problems, insurance, and loss and damage claims handling. But there are a number of additional areas where internal adjustments would aid the consumer.

In order to develop more coordination with DOT on safety input to operating rights cases, we are urging greater participation by the Federal Highway Administration in permanent motor carrier application proceedings before the Commission.

To aid in the protection of the interests of the investing community, we are advising the Securities and Exchange Commission of our concern in pinpointing

with certainty the extent, if any, of that agency's jurisdiction over secondary offerings of securities.

Other matters which would not strictly speaking fit into this category but relate more to service to the public, improved quality performance, efficiency of operation of the Commission, have also been taken. For example, a number of recommendations are being implemented to upgrade and protect the intergrity of the temporary authority processing machinery.

We expect to be making greater use of paralegal personnel in order to better allocate the resources of the agency.

The Commission has appointed a special task force to undertake a four-month comprehensive review of the Commission's Rules of Practice. Public views and suggestions, especially from the practitioner bar, have been sought. The task force is to search out contradictions in the rules, the possibilities for simplification and clarification, and consider establishing specific rules for rule-making proceedings.

By improving internal communications, we hope to enable the agency to be more responsive to an inquiring public. We are striving to make changes in our Public Informotion Office in order to centralize the disseminotion of Commission news.

IV. DEREGULATION

We are taking o hord look at whether we can, ond should, take actions on our own which would actuolly amount to self-imposed deregulotion or, at leost whot moy be colled reregulotion. The reaction in some quarters, as I will make further mention in o moment, has been less than enthusiastic. Nevertheless, I believe it is significont to note that the Commission has demonstroted the willingness to examine reform proposals which, in the not too distont past, would have been greeted as anothema.

We have institued o rulemaking proceeding reviewing all commerciol zones and terminal oreas with o view to considering whether we should broaden exempt zones.

The Commission will follow a policy with respect to grants of operating rights to carriers of granting authority as broadly as possible in terms of the commodities and service points and areas and as free as possible from service-inhibiting restrictions and other limiting or fragmenting features that can be expected to interfere with carrier growth, efficient operations, or rational service to the public.

We have continued to seek from Congress the power to make selective exemptions from regulation where such exemption would be in the public interest.

We have proposed and heard argument on a "no-suspend" proposal for general increase cases. While it would not be appropriate for me to comment on the merits of that case, I might make one notation, at least as to the volume and direction of responses. One attendee of the argument was heard to say "never have proposers been so praised while their proposal been so damned!"

CONCLUSION

The efforts made so far represent, in my estimation, a major step in the Interstate Commerce Commission's self-renewal process. It is a process which I hope will be ongoing, responsive to the public's needs, and well received by our friends and critics alike.

Those of you familiar with the Blue Ribbon Recommendations may have noted the absence from the list of accomplishments of at least one major proposal. The most significant recommendation before the Commission is one to establish an office of Public Counsel. We sorely need such an office and after some 35 years of on-and-off discussion we have had before us for several weeks now a specific detailed proposal. As proposed, the office would be a separate and independent office within the Commission, operating under a separately formulated budget. It would serve two basic functions: it would act as a contact point for the public, including the small, less affluent carriers who seek advice and aid; secondly, the office would assist the Commission and the public generally by

insuring that all the issues are fully developed, by focusing attention on the most significant issues, and in so doing helping to expedite agency decisionmaking. The Public Counsel would be expected to intervene in any Commission proceeding where he deems a public interest aspect would be represented or more fully developed. And he could be specifically directed by the Commission to intervene in a proceeding where thought necessary or appropriate. The special counsel subject is deserving of a speech in itself, and that's exactly the subject of Commissioner Corber's speech to you scheduled for this coming Friday. So I won't say much more about it except that I think the public, the shippers, the carriers, and the Commission itself should all gain if such an office were established. As of last week, the Commission had so far not approved the establishment of this much needed office. If the Commission cannot in the very near future announce that it has established such an office itself, I would favor reporting that it looks as though Congress will have to statutorily establish such an office and there appears to be enough interest on the Hill to do just that.

There are some other important recommendations which the Commission has declined to approve. For example, the Commission has unanimously approved in principle the greater use of prospective licensing as a tool for meeting transportation needs in broad areas where many case-by-case application proceedings can appropriately be eliminated or simplified. However, a majority has rejected the specific Blue Ribbon Panel recommendation for its use to attempt to establish in advance the particular criteria under which motor carriers should be allowed to participate in a proposed Special Certificate of Public Convenience and Necessity to transport general commodities moving in TOFC service.

In short those favoring internal regulatory improvements may, I think, be disappointed in some of the decisions made with respect to specific reforms suggested.

The best we can say, I think, is that we have had a mixed bag of results. But what has been approved should improve the functioning of the agency and its capacity to carry out its responsibilities in the public interest. More can be done, more should be done, and more is under consideration but much thought has been generated and significant progress is being made.

It is my hope that the Association of Interstate Commerce Commission Practitioners will take an ever increasing active role in this process of renewol and rejuvination of the Commission, its rules, its practices and its mandate. As I said two years ago, and I repeat it now, the obligation to carefully examine the extent to which the agency should bring about significant reforms in the regulation of surface transportation is not upon the agency alone. The Commission has just begun its response. We look forward to hearing from the Association.

(4) Do you have a field staff manual on policing pipeline violations? Water carrier violations? Please supply copies. What are your enforcement priorities for these modes?

Guidelines as to what areas of activity should be included in a compliance survey of a pipeline carrier recently have been prepared. A copy of the final draft of the guidelines is attached hereto. Also attached is a copy of the Staff Manual instructions for water carrier compliance.

The enforcement priorities for pipelines and water carriers are the same as for other modes of transportation when violations of the applicable statutes are discovered. However, there are more regulatory exemptions for pipelines and water carriers in the Interstate Commerce Act than for other modes of transportation. In respect to pipeline carriers, the Commission has always investigated thoroughly any complaints that were made by shippers and receivers, especially those relating to discriminations of service or tariff violations leading to favored treatment for selective shippers. Generally, the complaints have been few and far between. The energy crisis that developed in the last couple of years has brought greater attention on the pipeline industry. Accordingly, it is anticipated that as shipper interest increases in the regulatory features of pipeline transportation, the Commission will probably receive more complaints and the probability of greater enforcement action will result. Additionally, the Commission, on its own initiative, has already increased its attention toward the pipeline industry. There are no enforcement priorities set for weighing the oversight of any one mode more heavily than another. As a rule of thumb, responsiveness to the volume of public complaints has to some extent set the priority for use of the Commission's staff.

Corrected Draft

INTERSTATE COMMERCE COMMISSION
BUREAU OF OPERATIONS
WASHINGTON, D.C.

Field Staff Manual
Part V
Section H-1

TO THE FIELD STAFF:

SUBJECT: Compliance Survey - Pipeline Operations

Contents

1. HISTORY OF PIPELINE REGULATION: Pipeline regulation resulted from discriminatory and concessionary practices associated with oil transportation at the turn of the century.

Rail carriers were initially the primary carriers of petroleum and petroleum products, however, major refining companies became increasingly independent of railroads by investing heavily in the construction of trunk pipelines from producing areas to refineries. Independents were not able to finance pipelines of any length; and the high rates and onerous conditions of carriage imposed by the large refineries, through their pipeline subsidiaries, effectively excluded independent oil from those lines.

This situation led to the Hepburn Act of 1906, bringing transportation of oil and other commodities, except water and natural or artificial gas, under the control of the Interstate Commerce Commission.

Many pipelines claimed to be only dealers in oil, employing their lines in their own business and not holding themselves out as common carriers. After investigation in 1912, the Commission held that it was the intent of Congress to convert all interstate pipelines into common carriers. In the Pipeline cases,

the Supreme Court upheld the Commission in requiring these companies to file tariffs (234 U. S. 548 (1914)). In several cases the courts have construed the Hepburn Act as including pipelines engaged in transporting oil for joint owners and pipelines which transport only their own petroleum products (United States v. Champlin Co., 341 U. S. 290 (1951); Champlin Co. v. United States, 329 U. S. 29 (1946); Schmitt v. War Emergency Pipelines Inc., 175 F. 2d 335 (8th Cir. 1949), cert. den. 338 U. S. 869). These decisions make it clear that a single-company-owned pipeline transporting only its own oil is a common carrier for reporting purposes, but cannot be required to file rates or to transport the oil of others. However, a pipeline jointly owned by several oil companies and transporting the oil of its owners is a common carrier for all purposes and is required to file rates and transport the oil of others without discrimination as to rates, services, or facilities.

The Justice Department filed a complaint in a U.S. District Court in 1941 alleging that payment of dividends by pipeline companies to stockholders who were also shippers by pipeline constituted rebating which was unlawful under the Elkins Act. The result of this complaint was a consent decree which allowed shipper-owners of common carrier oil pipelines to receive dividends limited to seven (7) percent on the valuation of the pipeline's property, as determined by the Commission, giving each shipper-owner a proportion of this sum equal to the percentage of the stock owned (United States v. Atlantic Refining Co., Civil No. 14060 (D.D.C., Dec. 23, 1941)). The consent decree does not limit earnings to seven (7) percent of the pipeline's valuation but requires that earnings in excess of seven (7) percent be placed in a special surplus account and may only be used for specified purposes such as new construction or the retirement of debt incurred for construction purposes prior to the decree. Property constructed from this surplus is not to be included in ratemaking valuation. However, the 1941 consent decree presently applies only to pipelines whose corporate structure has remained unchanged since that time.

Conversion of pipelines to common carriers through legislation did not initially eliminate all the problems inherent in the control of pipelines by owner producers.

One such problem was maintenance of high minimum tender requirements (the minimum amount of oil which will be accepted for shipment) which prevented small oil producers or small refiners from shipping oil by pipeline. The most common requirement was 100,000 barrels. Small oil producers and refiners

complained of the minimum tender requirements of pipeline companies, and in 1922 a complaint before the Interstate Commerce Commission resulted in reduction of the minimum tender requirement from 100,000 barrels to 10,000 barrels by order of the Commission (Brandred Bros. v. Prairie Pipeline Co., 68 I. C. C. 458 (1922)). In the Reduced Pipeline Rates case, the Commission again found minimum tender requirements in excess of 10,000 barrels to be unreasonable (243 I. C. C. 115 (1940)).

Another device by which oil companies derived an advantage over small producers and refiners was by maintaining high pipeline rates. In 1934 the Commission entered upon a general investigation of pipeline rates for the transportation of crude oil. As a result of this investigation, the Commission found that the average rate of return earned by 35 pipeline companies in 1935 was 14.01 percent on the Commission's calculation of their properties, ranging from a deficit of 0.6 percent to a return of 46.86 percent. As a result of this proceeding, the Commission found the rates of 21 pipeline companies to be excessive (243 I. C. C. 115, 143).

In late 1940 the Commission rendered a decision in which an 8 percent rate-of-return level was established with respect to crude oil pipelines (243 I. C. C. 115 (1940); final order entered in 272 I. C. C. 375 (1948)). Another Commission decision established the principle of a 10 percent return for oil products pipelines (243 I. C. C. 589 (1941)). If during the compliance survey it is suspected or becomes apparent that the Commission's orders are being violated by a pipeline company, this information should be included in your compliance survey report. A full investigation of such a finding is necessary, but generally assistance of the Bureau of Accounts' auditors will be required. The regional director independently or in cooperation with the Washington office will arrange for the full field investigation.

2. TYPES OF PIPELINE COMPANIES: There are approximately one hundred pipeline companies regulated by the Interstate Commerce Commission. These carriers fall into four basic categories:

(1) Pipeline companies wholly owned by an oil company that produces and refines crude oil and markets petroleum products.

(2) Joint Venture Pipeline Companies owned by two or more oil and/or pipeline companies.

(3) Undivided Interest Pipelines or pipeline systems owned by two or more oil and/or pipeline companies but having no corporate entity.

The system is not incorporated, and tariffs are not filed for the system itself but rather each participant files its own tariffs and collects its own revenue.

(4) Companies owned and controlled through private and/or corporate stock ownership.

3. GLOSSARY OF INDUSTRIAL TERMS:

API - American Petroleum Institute

API Gravity - Specific gravity measured in degrees on the API scale. On the API scale, oil with the least specific gravity has the highest API gravity. Other things being equal, the higher the gravity the greater the value of the oil. Most crude oils range from 27 degrees to 35 dgrees API gravity.

Automatic Custody Transfer System - An automatic system for receiving and measuring oil.

Barrel - 42 U.S. Gallons.

BS&W - Basic sediment and water often found in crude oil.

Commingling - The intentional mixing of petroleums having similar specifications. In some instances products of like specifications are commingled in a pipeline for efficient and convenient handling. The result is known as a common stream.

Crude oil (crude petroleum) - Oil as it comes from the well, unrefined petroleum.

Density of petroleum - In the oil industry the density of crude oil is normally expressed in API degrees.

Floating roof tank - A storage tank with a flat roof that floats on the surface of the oil, thereby reducing evaporation.

Gathering facilities - Pipelines and pumping units used to bring oil from production leases to a central point, i.e., a tank farm or a trunk pipeline.

Gravity Banks - A system whereby a third party broker or marketer is used to protect the shipper against the consequences of commingling of different grades of oil transported in a common stream.

Petroleum products - Refined products of crude oil (crude petroleum).

Pig - Separation plug used to segregate shipments of oil within a pipeline.

Run ticket - A record of the oil run from a leased tank into a connecting line. The ticket is made out in triplicate by the gauger and witnessed by the lease owner's representative, usually the pumper. The run ticket, an invoice for oil delivered, shows opening and closing gauge, API gravity, temperature, and BS&W; with copies to the purchase, pumper, and gauger.

Sour crude - Crude oil containing relatively large amounts of sulphur (15% or more).

Sweet crude - Crude oil containing very little sulphur.

Tank bottoms - Oil-water emulsion mixed with free water and other foreign matter that collects in the bottoms of stock tanks and large crude storage tanks.

Trunk pipeline - A large diameter pipeline into which smaller lines connect; a line that runs from an oil producing area to a refinery.

4. STATUTE PROVISIONS AND REGULATIONS: Part I of the Interstate Commerce Act includes regulations in connection with the transportation, by pipeline, of oil or other commodities, except water and natural or artificial gas. However, common carriers by pipeline are not subject to all of the provisions included in Part I of the Act, and a careful reading of the statute is necessary to identify those provisions that are applicable and those that are not. The foundation of pipeline regulation is Section 1, Paragraphs 1, 3,. and 4, portions of which are quoted below:

"(1) That the provisions of this part shall apply to common carriers engaged in ---

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water..."

"(3)(a) The term 'common carrier' as used in this part shall include all pipe-line companies;..."

"(4) It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefore, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto;..." (Emphasis added)

The reference to "every common carrier subject to this part" includes pipelines, and such carriers must establish through routes and joint rates with other pipelines.

The following is a brief discussion of regulations included in Part I of the Act which are applicable to pipelines as well as the corresponding Code of Federal Regulations reference.

Section 1, Paragraphs (1), (3), and (4) were previously quoted in part as being applicable. The concept of providing service upon reasonable request is of particular importance because a large number of these common carrier pipelines are wholly owned by one or more major oil companies. Unlike railroads, pipelines are not subject to the commodity clause in Section 1, Paragraph 8 which prohibits the transportation of property or products manufactured, mined, or produced by its subsidiary. As a result, it may be advantageous to the parent for its subsidiary pipeline to deny access to the pipeline by non-pipeline owner competitors, either directly or indirectly by some device. This becomes important when we recognize that a pipeline owned by a major oil company may be the only means of transportation for a small producer having no ownership or other interest in the pipeline.

Also applicable to pipelines are Paragraph 5 and 6 of Section 1 which require establishment of just and reasonable rates. Further reference to the Commission's jurisdiction over rates and routes may be found in Section 15, Paragraphs 1 and 3.

Section 2 prohibits discrimination through special rates, rebates, or other devices, while Section 3 makes it unlawful for " A pipeline common carrier to make, give, or cause any undue or unreasonable preference or advantage or any undue or unreasonable prejudice or disadvantage in any respect whatsoever..."

Section 4, Paragraph 1 prohibits common carrier pipelines from charging or receiving greater compensation for a shorter than for a longer distance over the same line or route in the same direction. This is commonly known as the long-and-short-haul provision.

Section 5, Paragraph (2) requires Commission approval and authorization for two or more carriers to consolidate or merge. However, in Paragraph (13) the definition of a "carrier" does not include pipelines.

Lacking specific reference to pipeline companies, Paragraph 13 removes Commission jurisdiction over merger or consolidation of pipelines. Paragraph 13, however, does not mention Paragraph 1; therefore, the language of Section 5, Paragraph 1 is such that it embraces pipelines, i.e., "... it shall be unlawful for any common carrier subject to this part, part II, or part III..."and prohibits the pooling or division of traffic by one or more carriers.

Section 5a is concerned with rate and other named agreements between carriers. The provisions of this section require that carriers, including pipelines, apply to the Commission for approval of such agreements. See 49 CFR 1331, and especially 1331.1 which refers specifically to pipeline companies. Also see 49 CFR 1030, filing of contracts by common carriers.

Section 6, Paragraph 1 requires that pipelines file with the Commission and keep open to public inspection all schedules showing rates, fares, and charges for transportation. Paragraphs 2 through 4 pertaining to posting, changing, and filing; and Paragraph 5 relating to the filing of traffic contracts, agreements, or arrangements with other common carriers, apply to pipelines.

Paragraph 6 requires that the form of publication, filing, and posting of schedules be in accord with such regulations as prescribed by the Commission. In this regard, the regulations found at 49 CFR 1300 are applicable as stated in 49 CFR 1300 (a)(1), which makes specific reference to pipeline companies. Also see 49 CFR 1305 as it relates to the posting of tariffs.

Paragraph 7 requires that no carrier, including pipelines, shall participate in the transportation of property unless schedules are published and filed in accordance with provisions of Section 6, and that a carrier shall not charge or receive a greater or less compensation for such transportation than that specified in the tariff. A carrier is also prohibited from refunding or remitting in any manner or by any device any portion of the rates, fares, and charges or extending to any shipper or person any privileges or facilities in the transportation of passengers or property, except as are specified in such tariffs.

Section 15, Paragraphs 1 and 7 authorize the Commission to review all pipeline rates and, if it determines that such rate is unjust or unreasonable or unjustly discriminatory or unduly preferential, to suspend such rates and determine and prescribe the just and reasonable rate. Concerning the division of such rates between carriers, Section 15, Paragraph 6 also provides that the Commission, after a hearing, may prescribe just and reasonable divisions of rates.

A feature of pipeline tariffs which may seem in conflict with rail tariffs concerns the use of apparently permissive language, affording the pipeline the opportunity to go "one way or the other" in its relationship with shippers. Quoted below is an example from a major pipeline company tariff:

> "...the carrier will not be obligated to make any single delivery of not less than five thousand barrels."

As a result, the carrier could deny a delivery of less than 5,000 barrels to one shipper while permitting such a delivery to another shipper. Similar permissive items noted in pipeline carrier tariffs should be included in the compliance survey report.

Any questions which arise in connection with pipeline tariffs, terminology, or application should be discussed with the tariff publishing officer, where available, or with the appropriate operating or accounting personnel.

Of the approximately 100 pipeline companies subject to our jurisdiction, a number of the smaller companies, while required to file the initial valuation reports, have been relieved from filing annual valuation documents.

Section 20, Paragraph 1, authorizes the Commission to require annual, periodical, or special reports from carriers. 49 CFR 1241.1 requires pipelines to file annual reports on or before the 31st day of March in each year. 49 CFR 1241.61 requires pipelines to file Annual Report Form P. 49 CFR 1241.62 requires pipelines with annual operating revenues of more than $500,000 for the three consecutive calendar years to file quarterly reports.

Section 20, Paragraph 3, authorizes the Commission to prescribe a Uniform System of Accounts for pipelines, with Paragraph 4 authorizing the Commission to prescribe rates of depreciation for pipeline properties. 49 CFR 1204 provides the system of accounts to be utilized by pipelines in conjunction with the accounting requirements of Section 20.

Section 19a authorizes the Commission to prescribe a basic and annual valuation of each pipeline's properties. 49 CFR 1260 provides for reporting of data for initial pipeline valuations while 49 CFR 1261 prescribes the regulations governing the reporting of property changes by pipeline carriers.

The Commission's authority to enter upon lands and buildings and inspect and copy records of pipeline companies is found in Section 20, Paragraph 5. The penalty for failure or refusal to permit examination is found in Section 20, Paragraph 7a. Paragraph 7b is concerned with false entries in reports prescribed by the Commission, including the penalty for such entries.

Other penalty provisions of the Act as related to pipeline companies are included in Section 8, civil liability of common carriers for damages caused by violation of Part I. Sections 9 and 13 provide that any injured person may complain to the Commission or bring a legal action in a Federal district court to recover damages resulting from such violations. Section 10 prescribes the penalty for willful violations of Part I, and in addition prescribes the penalty for unlawful discrimination in rates, fares, or charges for the transportation of property.

Pipeline companies are also subject to the provisions of the Elkins Act, 49 USC 41(1), which prohibits the solicitation, granting, or receiving of rebates and concessions. Penalties for violations of the Elkins Act are severe; up to a $20,000 fine or two years' imprisonment for each offense.

Other areas of Commission jurisdiction over pipeline companies include such items as 49 CFR 1002, fees and fee schedules; Interstate Commerce Act Part I, Section 22, and 49 CFR 1330 as they relate to the filing of reduced rates for the transportation of property of the United States Government or any agency or department thereof.

49 CFR 1224 concerns the destruction of records. Prior to commencing a pipeline survey, it would be beneficial to the staff member to review the destruction of records section of the Code of Federal Regulations to gain an insight into the various types of records or information maintained by a pipeline company.

Certain regulations which, although common to other regulated carriers, are not applicable to pipeline companies. For example, the Commission has no jurisdiction over the construction or abandonment of a pipeline; therefore, there is no need for a carrier to obtain a certificate of public convenience or necessity before beginning operations. A pipeline may also abandon operations without Commission approval.

In Section 3, Paragraph (2), pipeline carriers are not included as carriers restricted from delivering freight before the payment of freight charges and, therefore, the credit regulations found in 49 CFR 1320-1325 do not apply.

With respect to the issuance of a bill of lading, it should be noted that 49 CFR 1035.1, detailing the requirements for certain forms of bills of lading, makes reference to rail and water carrier and express companies but makes no reference to pipeline companies, thereby exempting pipelines from these provisions.

While pipeline companies are not required to issue a standard form of bill of lading, they are required to issue a receipt for property and are liable for loss and damage as provided by Section 20, Paragraph 11.

49 CFR 1005, Principles and Practices for the Investigation and Voluntary Disposition of Loss and Damage Claims and Processing Salvage, refers specifically to railroad, express company, motor carrier, water carrier, and freight forwarder with no mention of pipeline companies. Hence, while pipelines are not subject to either the bill of lading or claims provisions of 49 CFR 1035 and 49 CFR 1005 respectively, they are responsible for loss and damage under the provisions of Section 20, Paragraph 11. A compliance survey

should include a review of the pipeline carrier's claim handling procedures to determine whether they are being handled in a fair and equitable manner or if they reveal either concessionary or discriminatory practices on the part of the carrier.

5. COMPLIANCE SURVEY AND PROCEDURES : The survey should commence with a review of the applicable regulations, both the Act and Code of Federal Regulations. Other office preparation will include a review of the Bureau of Accounts file, where available.

Surveys generally should start at the pipeline company's general office with an Operating Department or Oil Movements Department officer. In the event the pipeline is owned by an oil company it is likely that the pipeline company will have no general office personnel but rather utilize oil company personnel. Under such an arrangement, there should be an operating agreement between the oil company and the pipeline company which provides for the oil company to furnish operating and accounting services. The operating agreement may extend to field personnel, while in some cases the field personnel will be employees of the pipeline company. The difficulty which may be encountered in dealing with oil company employees acting for the pipeline company is that these persons often have difficulty divorcing themsleves and the pipeline company's interests from their primary function, i.e., operation of the oil company.

This same situation should not exist in surveying a pipeline company which is not a subsidiary of an oil company.

The initial interview with the operating or oil movements officer is intended to acquaint the staff member with the geographical areas served by the company's lines, an approximate estimate of the volume of traffic transported for the parent and its subsidiaries, as compared with other shippers, where the pipeline company is part of a major oil company's corporate structure.

The operating official will be able to furnish such drawings and pipeline maps as may be requested. Tariffs may also be maintained in both the operating and accounting departments.

Having completed the initial interviews with operating personnel, and being acquainted with the organizational structure and physical characteristics of the pipeline company, the staff member should request the company's procedure manual. This record should be reviewed to determine the carrier's written policies concerning such items as minimum tender, loss and damage claims, oil measurements, and such other matters that may come to the staff member's attention in reviewing the manual.

The survey should include a review of carrier tariffs. Pipeline company rate tariffs are often single page documents with a rate applicable from one origin to one destination for the transportation of crude petroleum or petroleum products. As such, there may be hundreds of rate tariffs on file referring to a single rules tariff. In other cases the rate tariff may also include the applicable rules and regulations.

Having reviewed the tariffs, particularly the applicable rules tariffs, the staff member should begin a review of oil movements records. This will include written tenders, oil movements scheduling, gathering reports, inventory analysis reports, and such other reports as may be available.

Where the rules tariff requires tenders in writing on or before a specified day in the month preceding the month during which the movements will occur, a review of the tenders will show compliance or non-compliance with this item. In this regard, it should be noted whether independent shippers are required to fully comply with the tariff while the parent and/or other major oil companies are not required to do so.

This same document should serve as the first clue as to whether the carrier is furnishing transportation upon reasonable request as required by Part I, Section 1, Paragraph (4).

Inventory analysis reports should reveal whether shippers are required to maintain minimum or maximum inventories in the pipeline. This inventory may be broken down geographically by line segment or by applicable tariff. Another consideration is whether the carrier requires independent shippers to maintain a proportionately greater inventory than that required of its major oil company shippers or its parent shipper. For example, if the parent ships 70 percent of the volume, is it required to maintain only 50 percent of the pipeline inventory?

Reviewing inventory reports may also enable the staff member to determine patterns which would suggest that a particular shipper or consignee is unable to accept deliveries during a given month or over a period of months account refinery or other problems. This will be detected by observing increased inventory over one or more months with possible side notations as to cause. For example, a review of such a report for a major pipeline revealed that a shipper with a maximum permissible inventory of 60,000 barrels for a given line segment increased from

26,453 barrels to 145,626 barrels in a four month period, with a notation on the report "Refinery Trouble." No demurrage charges were assessed in this instance, although the carrier's tariff included a demurrage item.

Accumulations such as this can be verified in the oil accounting section through a review of oil receipt tickets as well as accounting statements of receipts and deliveries which will furnish, by shipper, receipts and deliveries during the reporting period.

Receipt of oil over extended periods without corresponding deliveries raises the question of assessment of storage or demurrage charges. Carriers may or may not provide storage facilities with corresponding charges. Application of storages and/or demurrage charges should be reviewed to determine if they are assessed uniformly. While formal oil movement schedules may not be available, operating personnel will have knowledge, and likely internal documents, which furnish the average time, in days, required to move a barrel of oil from one point on the system to another point on the system, if not by specific origin and destination at least by geographic, i.e., West Texas to St. Louis, Missouri.

Oil movements (operating) and accounting reports may appear to duplicate one another, however, they may be used in conjunction with one another. The primary difference is that the oil movements personnel are not as concerned with the exact accounting for barrels of oil as their counterparts in the oil stocks accounting section. Operating records may initially be based on projected movement (tenders) with reporting of actual movements rounded to a whole barrel figure, while oil accounting is charged with reporting to the tenth of a barrel.

The records maintained by oil accounting personnel should be much more accurate than those maintained by the movements staff. They include the actual receipt and delivery tickets generated at the origins and destinations in addition to an accounting of oil gathered from the various fields for movement in trunk lines.

No amount of discussion here will substitute for a detailed examination of both the movements and accounting records, and at best only suggestions can be offered as to the records which will be available, their purpose, and the conclusions which can be drawn from their examination.

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The primary purpose of the compliance survey is to ascertain if the carrier is in compliance with applicable regulations and those imposed on them by their own tariffs. Failure to comply with any of these may result in discriminatory or concessionary practices which should be pursued to a conclusion either at the time of the survey or later after investigative instructions have been given as to the type of evidence needed to prove the violations for enforcement action. Wherever possible the staff member should submit with the compliance survey report documentation to support all alleged violations.

There is only so much information which can be obtained from a review of carrier documents. For example, review of receipt or delivery tickets at the general office may only seem to be a mathematical exercise, whereas a visit to the field will furnish the staff member with a first hand understanding of the purpose of this record as well as the functions, i.e. measurements, etc., required in its preparation. Wherever possible, without incurring unnecessary delay or expense in the conduct of a survey, the staff member should visit one of the carrier's field facilities to gain a first hand understanding of the various operation and reporting procedures involved at that and other similar facilities. Such a visit may develop that the carrier is performing field services such as storage, blending operations or batching without appropriate tariff authority, or where such authority exists, without reporting in such a manner as to allow the proper accessorial charges to be computed and assessed.

6. COMPLIANCE SURVEY REPORT : The pipeline compliance surveys should be reported in narrative form, including any suspected or alleged violations detected. It is essential that the staff member prepare and maintain notes during the compliance survey to support the various carrier activities which he audits. However, it will not be necessary to report in detail each of the records and functions surveyed where no exceptions are taken, but a listing of the matters surveyed must be included in the report.

Lewis R. Teeple
Acting Director

LIST OF CORPORATE NAMES OF COMMON CARRIERS BY PIPELINES

Acorn Pipeline Company
Airforce Pipeline, Inc.
Allegheny Pipeline Company
Amdel Pipeline, Inc.
American Oil Pipe Line Company
American Petroleum Company
(of Texas)
Amoco Pipeline Company
APCO Products Pipe Line Company
Arapahoe Pipe Line Company
Arco Pipe Line Company
Ashland Pipe Line Company

Badger Pipe Line Company
Bell Oil and Gas Company, The
Belle Fourche Pipe Line Company
Bigheart Transport, Inc.
Black Lake Pipe Line Company
Bradford Transit Company
Buckeye Pipe Line Company
Butte Pipe Line Company

CRA, Inc.
Cal-Ky Pipe Line Company
Cal-Nev Pipe Line Company
Canadian Trunk Line
Central Florida Pipeline Corporation
Chase Transportation Company
Cherokee Pipe Line Company
Chevron Pipe Line Company
Cheyenne Pipeline Company
Chicap Pipe Line Company
Cities Service Pipe Line
Company
Clarco Pipeline Company
Cochin Pipe Lines, Ltd.
Colonial Pipeline Company
Conn-Mass Pipe Line, Inc.
Cook Inlet Pipe Line Company
Crown Central Pipe Line &
Transportation Corporation, The
Crown-Rancho Pipe Line Corporation

Diamond Shamrock Corporation
Dixie Pipeline Company
Dome Pipeline Corporation

Emeral Pipe Line Corporation
Eureka Pipe Line Company, The
Explorer Pipeline Company
Exxon Pipe Line Company

Great Northern Pipeline Company
Gulf Central Pipeline Company
Gulf Refining Company

Hess Pipeline Company
Hess Texas Pipe Line Company
Hudson Bay Oil and Gas Company
Limited
Husky Pipeline Company
Hydrocarbon Transportation, Inc.

Interprovincial Pipe Line, Limited

Jayhawk Pipeline Corporation
Jet Lines, Inc.

Kaneb Pipeline Company
Kaw Pipe Line Company
Kenai Pipe Line Company, Inc.
Kiantone Pipeline Corporation

Lake Charles Pipe Line Company
Lakehead Pipe Line Company, Inc.
Laurel Pipe Line Company (Incorporated
under the law of Ohio)

Mapco, Inc.
Marathon Pipe Line Company
Michigan-Ohio Pipeline Corporation
Mid-Valley Pipeline Company
Minnesota Pipe Line Company
Mobile Pipe Line Company
Moore Oil Terminals

National Transit Company
Navajo Refining Company
Northern Gas Products Company

OMR Pipe Line Company
Ohio River Pipe Line Company
Okan Pipeline Company
Olympic Pipe Line Company
Owensboro-Ashland Company

Paloma Pipe Line Company
Pan American Pipe Line Company
Panotex Pipe Line Company
Pasco Pipeline Company
Pawnee Pipe Line Company
Phillips Petroleum Company
Phillips Pipe Line Company

LIST OF CORPORATE NAMES OF COMMON CARRIERS BY PIPELINES

Pioneer Pipe Line Company
Plains Pipe Line Company
Plantation Pipe Line Company
Platte Pipe Line Company
Plymouth Pipe Line Company
Portal Pipe Line Company
Portland Pipe Line Corporation
Project Five Pipe Line Corporation
Pure Oil Pipe Line Company
Pure Transportation Company

Santa Fe Pipeline Company
Shell Pipe Line Corporation
Sinclair Pipe Line Company
Skelly Pipe Line Company
Sohio Pipe Line Company
Southcap Pipe Line Company
Southeastern Pipe Line Company
Southern Pacific Pipe Lines, Inc.
Southern Pipe Line Company
Sun Oil Line Company of Michigan
Sun Pipe Line Company
Sun Pipe Line Company of Illinois
Sunray Pipe Line Co.

Teche Pipe Company
Tecumseh Pipe Line Company
Texaco-Cities Service Pipe Line Company
Texas Eastern Pipeline Company Corporation
Texas-New Mexico Pipe Line Company
Texas Pipe Line Company, The
Tidal Pipe Line Company
Tide-Water Pipe Company, Limited, The
Trans Mountain Oil Pipe Line Company
Trans Mountain Oil Pipe Line Corporation
Trans-Ohio Pipeline Company

Wascana Pipe Line, Ltd.
Wabash Pipe Line Company
Wesco Pipe Line Company
West Shore Pipe Line Company
West Texas Gulf Pipe Line Company
Western Oil Transportation Company, Incorporated
Westspur Pipe Line Company
White Shoal Pipeline Corporation
Wilcox Oil Company
Williams Brothers Pipe Line Company
Wolverine Pipe Line Company
Wyco Pipe Line Company

Yellowstone Pipe Line Company

INTERTSTATE COMMERCE COMMISSION
BUREAU OF OPERATIONS
WASHINGTON, D.C.

Field Staff Manual - Part IV
Section F-1

TO THE FIELD STAFF:

SUBJECT - Enforcement - Parts III and IV of the Act

Contents

(1) GENERAL - WATER CARRIERS:

Part III of the Interstate Commerce Act effective in 1940, authorizes the Commission to regulate water carriers. The regulation to which water carriers are subject is generally similar to that provided for rail and motor carriers.

It is important to note the distinction between a common and contract water carrier. Contract carriers are, in some respects, subject to different regulations than common carriers.

A common carrier is defined as "any person which holds itself out to the general public to engage in the transportation by water in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation,...." (Section 302(d).

A contract carrier is a person which, "under individual contracts or agreements, engages in the transportation /other than as a common carrier/by water of passengers or property in interstate or foreign commerce for compensation." (302(e)). Under the second sentence of section 302(e), the furnishing of vessels to persons other than carriers subject to the act /shippers/is contract carriage.

The ensuing analysis of the Commission's jurisdiction over water carriers will be in terms of Operating authority and service, Rates and charges, carrier consolidations and transfers, and accounts, records, and reports.

(2) OPERATING AUTHORITY AND SERVICE

No common carrier may engage in water transportation subject to Part III unless it holds a certificate of public convenience and necessity. No contract carrier may engage in water transportation subject to Part III unless it holds a permit from the Commission. A certificate issued to a common carrier specifies the route and ports which the carrier may serve. A permit issued to a contract carrier specifies the business of the carrier and the scope and conditions thereof.

Dual common and contract operations are prohibited except under a finding by the Commission for "good cause shown" that such operations are consistent with the public interest and the national transportation policy under Sec. 310.

The Commission may grant a water carrier temporary operating authority to enable the provision of service for which there is an immediate and urgent need to a point or points or territory having no carrier service capable of meeting such need under Section 311.

It is the obligation of water common carriers to serve and it is the Commission's responsibility for the enforcement of this obligation. Each common carrier has a duty, under Section 305(a) to provide and furnish transportation upon reasonable request therefor. Instances of failure to provide service should be handled in accordance with FSM - Part V, Sections B-1 and B-3.

(3) RATES AND CHARGES

Part III provides that the rates of common carriers and the classifications, regulations, and practices relating thereto shall be just and reasonable and prohibits the charging of unduly or unreasonably discriminatory, preferential, or prejudicial rates or charges. In the enforcement of these provisions the Commission is empowered to award reparation for damages to shippers by reason of rates charged in the past. Contract carriers by water must "establish and observe reasonable minimum rates or charges." The Commission's jurisdiction extends in this respect, therefore, to the fixing of only minimum rates. A new rate or charge may be suspended and an investigation entered upon, either on the Commission's own motion or on complaint.

Complaints involving improper application of rates and charges should be handled in accordance with FSM-Part V, Sections B-1 and B-3. Handling of other traffic matters should be in accordance with FSM-Part IV, Sections C-1 and C-2.

(4) CARRIER CONSOLIDATIONS AND TRANSFERS

The act makes it lawful, with the Commission's approval, for two or more carriers (defined as a carrier by railroad, an express company, or a sleeping-car company subject to part I, a motor carrier subject to part II, and a water carrier subject to part III) to consolidate or merge their properties or any part thereof, or for a carrier or two or more carriers jointly to purchase, lease, or contract to operate the properties of another or to acquire control of another carrier through ownership of its stock or otherwise, or for a person not a carrier to acquire control of two or more carriers or for such a person which has control of one or more carriers to acquire control of another carrier.

By the terms of the Panama Canal Act (1912), railroads are not permitted to own or control any common carrier by water operating through the Panama Canal or elsewhere with which it does or may compete. Exceptions may be made, other than in the case of a Panama Canal carrier.

Water carrier authority may be transferred from one holder to another in accordance with the provisions of 49 CFR 1141.

Field staff action on matters involving consolidation, merger, transfer, etc. should be handled in accordance with FSM - Part IV, Sections B-1 and B-2. Unlawful operations or consolidations, mergers,- etc. should be reported in accordance with FSM - Part V, Section B-3.

(5) ACCOUNTS, RECORDS AND REPORTS

The Commission is authorized to prescribe, and has prescribed, uniform systems of accounts for water carriers subject to its jurisdiction and the manner in which such accounts shall be kept. It engages in examination of carrier's accounts and requires changes therein when necessary. It also may prescribe, in its discretion, the form of any and all accounts, records and memoranda kept by carriers. It also requires annual and periodical reports from such carriers.

The handling of accounting matters by the field staff will be in accordance with the provisions of FSM - Part IV, Sections E-1 through E-6.

(6) EXEMPTIONS

Part III of the Act provides numerous exemptions from the regulations for operations of carriers. Some of these exemptions are statutory and

others are by Order upon application or by the Commission's own initiative. Those exemptions are as follows:

STATUTORY EXEMPTIONS

Sec. 303(b) - Bulk exemption

(c) - Bulk exemption - contract carrier

(d) - Bulk exemption - liquid cargoes

(f)(1) - Incidental transportation by water by Part I or Part II carrier

(f)(2) - Incidental transportation - collection, delivery service in terminal areas and floatage, car ferry, lighterage, towage, when performed for another authorized water carrier as agent or under contract.

(g)(1) - Within limits of single harbor or between contiguous harbors when not common etc.

(g)(2) - Small craft - not more than 100 ton carrying capacity or not more than 100 indicated horsepower, and to passenger carrying vessels only equipped to carry no more than 16 passengers.

(g)(2) - Ferries
- Contractor equipment employed or to be employed in construction or repair for the water carrier.
- Operation of salvors (salvage companies)

EXEMPTIONS BY ORDER

Sec. 302(e) - OP-WC-10 APPLICATION: Exemption to persons or classes of persons - Contract carrier to furnish vessel (demise charter only).

303(h) - OP-WC-10 APPLICATION: Exemption of carrier engaged solely in transportation for its parent company.

303(e)(1) - form not prescribed: Application required, exemption transportation of passengers - U.S. Ports via foreign port.

303(e)(2) - BWC-1 APPLICATION: Contract carrier not competitive with common carriers operating under Parts I-II-III.

302(e) - EX PARTE 146 49 CFR 1071.1 Contract carriers leasing or chartering vessels for transporting machinery, etc. OIL FIELDS.

302(e) - EX PARTE 147 49 CFR 1071.2 Contract carriers - empty vessels to and from shipyards, FLOATING OBJECTS not designed to carry passengers or property.

(7) GENERAL - FREIGHT FORWARDERS

Part IV of the Act, effective in 1942, extended the Commission's authority to include economic regulation of freight forwarders. Section 402(a)(5) defines a freight forwarder and section 410(a) provides that no person shall engage in service subject to Part IV unless such person holds a permit authorizing such service.

Section 413 of the Act subjects a forwarder to the billing requirements under Section 20(11) as a common carrier. The forwarder must issue a receipt or bill of lading upon receipt of property, covering the transportation to ultimate destination. Credit regulations contained in 49 CFR 1322 are applicable to freight forwarders pursuant to the provisions of 49 CFR 1324. There are no C.O.D. regulations prescribed for forwarders.

Forwarders are required to publish rates and file tariffs with this Commission. The insurance requirements are set forth in 49 CFR 1084.

(8) AUTHORITY AND SERVICE

Freight forwarders provide a service entirely different from that offered by other common carriers. Pursuant to authority granted in their permit, they assemble numerous individual shipments, forward them for transportation in volume quantities and then distribute such shipments to consignees at destination.

The holder of a forwarder permit is obligated under section 404(a) to render service upon reasonable request therefor. Failure to provide adequate and continuous service constitutes sufficient ground for a change in, or revocation of, the permit. Revocation is made possible under section 410(f). These matters should be handled in accordance with FSM - Part IV, Sec. G-1.

(9) TRANSFERS

An operating right (permit) to act as a freight forwarder may be transferred from one holder to another with the approval of this Commission. Application for transfer of a permit must be filed in accordance with 49 CFR 1151.

(10) ACCOUNTS AND REPORTS

The Commission has prescribed a uniform system of accounts for freight forwarders subject to its jurisdiction. The regulations require periodic filing of reports by the forwarders.

Handling of accounting matters by the field staff will be in accordance with the provisions of FSM - Part IV, Sections E-1 through E-6.

(11) EXEMPTIONS

Part IV of the Act provides exemption from economic regulations to various types of operations. These statutory exemptions are set forth in sections of the Act as follows:

Section 402(b)(1) - Service performed by or under direction of agricultural cooperative

402(b)(2) - Service performed where property consists of ordinary livestock, fish, agricultural commodities, or used household goods, if the person engages in service subject to this part with respect to not more than one of the classification of property above specified.

402(c)(1) - Shippers' associations

402(c)(2) - Shippers' agent or warehouseman

Violations of the foregoing provisions of the Act should be investigated and reported thereon in accordance with existing instructions.

R. D. Pfahler
Director

INTERSTATE COMMERCE COMMISSION
BUREAU OF OPERATIONS
WASHINGTON, D.C.

Field Staff Manual - Part IV
Section G-1*

TO THE FIELD STAFF:

SUBJECT: Revocation of Operating Authorities

Contents

1. GENERAL: Section 312a, added to part III of the act in 1965, and section 410(f) provide for revocation of water carrier certificates and permits and freight forwarder permits, respectively. Both sections allow for voluntary revocation of such authorities "upon application of the holder, in the discretion of the Commission." Both sections also provide for involuntary revocation of such authorities, in whole or in part, upon complaint or on the Commission's own initiative, after notice and opportunity for hearing, on the grounds set forth in (a) and (b) below.

(a) Water Carriers: Certificates and permits issued under part III of the act may be revoked under section 312a upon willful failure of the holder "to comply with the provisions of section 305(a) with respect to performing, providing, and furnishing transportation upon reasonable request therefor . . . . . ." after an appropriate order

*CANCELS: Operations Manual OM W-2

has been entered under section 304(e) requiring performance of the transportation and a reasonable time allowed for compliance. Although the performance of service provisions of section 305(a) are applicable only to common carriers by water, the Commission has determined that, inasmuch as section 312a expressly refers to "certificates and permits" whenever referring to the authorities within its coverage, 312a is to be interpreted as including contract carrier permits as well as common carrier certificates.

(b) Freight Forwarders: Under section 410(f) a freight forwarder permit may be revoked for willful failure to comply with any provision of part IV of the act, or with any order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such permit, after an appropriate order has been entered commanding obedience to such requirement as found to have been violated and a reasonable time allowed for compliance.

In the main, proceedings looking to voluntary revocation of water carrier and freight forwarder authorities are instituted where the operation has been dormant for a period of time and there is no indication that the authorized service will be resumed. Such proceedings are initiated by the issuance of orders which generally require the holder of the authority to show cause why its operation should not be resumed or its authority not be revoked, or alternatively to indicate that it desires a hearing in the matter. If request for a hearing is made by a responsive pleading, a hearing is held. However, if no reply is made, an order is issued providing for revocation of the authority. The following instructions will provide guidance for the handling of revocation matters in the field.

2. REQUESTS FOR REVOCATION: (a) Requests for revocation of water carrier or freight forwarder operating authority should be filed on Form OR-C-1 where the operations have been

discontinued. In instances where the operation has been dormant for a long period of time and there is no plan for resumption, it is appropriate to suggest to the holder of the authority that it may wish to submit a voluntary request for revocation. If submitted, the longer formal revocation proceeding may be eliminated. In the use of Form OR-C-1, the number 212(a) indicating the section of the act should be charged to 312a for water carriers and to 410(f) for freight forwarders. The docket number or numbers under which the authority is issued should be shown, along with the date of issuance of the certificate or permit, in order to properly identify the authority to be revoked.

(b) Requests for revocation should be signed by:

(1) the owner (if an individual) or his authorized agent,
(2) all partners (if a partnership) or all authorized agents acting for the partners,
(3) authorized officers of a corporation, or
(4) executor, administrator, etc., as appropriate, together with proof of their appointment, if such proof has not already been filed.

The original and one copy of such a request should be transmitted, via the regional director, to the Section of Water Carriers and Freight Forwarders for appropriate attention.

(c) A field report is not required when a water carrier or freight forwarder voluntarily requests revocation of its authority. However, the request should set forth the reasons for the request in the space provided on the form. The following additional information also is desirable: (1) approximate date the operation was discontinued, (2) disposition of equipment, if any, (3) what the owner or owners are presently doing, and (4) possibility of a resumption of the operation.

(d) Petitioner for voluntary revocation should clearly understand, as stated in Form OR-C-1, that upon revocation of his authority, the operations which are revoked may not

be resumed unless and until another authority shall have been granted, either through purchase of authority or through the filing and successful prosecution of a new application.

3. DORMANCY: (a) As noted, section 312a provides that water carrier authorities may be revoked when a carrier fails to render service upon reasonable request. It has been determined that where a carrier is completely dormant, the requirements of the statute with respect to such failure can be met by the issuance of an order commanding resumption of the operation within a fixed period of not less than 30 days. A carrier is considered completely dormant when the holder of the authority has ceased to operate as a water carrier, no longer operates any vessels, maintains no place of business, and, therefore, for all intents and purposes is no longer in position to render any transportation service. However, where the carrier is dormant insofar as its authorized operations are concerned, but maintains a place of business and operates vessels in exempt water carrier operations or services not subject to the act, it is considered to be only partially dormant, and no attempt will be made to institute a revocation proceeding under section 312a, except: (1) upon voluntary application of the holder, (2) a complaint under section 312a is filed, or (3) there is clear evidence that the carrier unjustifiably has failed to provide its authorized service upon reasonable request. It also is not intended that a revocation proceeding be instituted where the carrier has access to a place of business or facilities with which to operate, and it contends that the authorized transportation would be performed, if offered.

(b) Revocation proceeding may be instituted under section 410(f), by appropriate order, where the authorized freight forwarder operations are dormant and the forwarder has no plans for resumption of such operations. In such instances the forwarder is considered not in compliance with the terms of its permit providing that the holding of such permit is conditioned upon the exercise of the authority specified therein. With respect to insurance compliance, however, as pointed out in FSM - Part IV, Sec. D-3, Parag. 1., dormant forwarders not engaged in their authorized operations are

not required by part IV of the act to comply with insurance requirements.

4. INVESTIGATIONS: In the course of a compliance investigation, or a special investigation which may have been requested by the Section of Water Carriers and Freight Forwarders, if dormancy is found to exist and the water carrier or freight forwarder is not willing to submit a Form OR-C-1 voluntarily requesting revocation, the investigator should seek information upon which consideration may be given as to whether a revocation proceeding should be instituted in accordance with the foregoing. The following information should be obtained and reported as set forth in paragraph 5 below:

(1) whether the authorized operations have been discontinued in whole or in part, the approximate date thereof, and the reasons therefor;

(2) whether the holder presently is engaged in any exempt operations or other transportation not subject to the act;

(3) whether the carrier or forwarder still maintains a place of business from which it might operate, or has access to such a place of business;

(4) if the holder is a corporation which has been dissolved or liquidated, the effective date and documents to establish such information, if available from the carrier or the State, should be obtained;

(5) the disposition, if any, of the carrier's or forwarder's equipment and facilities;

(6) whether the carrier or forwarder has any plans for the resumption of operations; and

(7) whether the carrier or forwarder has declined to provide any of its authorized transportation.

Along with this information, the field staff member should submit his recommendation as to the action to be taken by the Commission with respect to the carrier's or forwarder's authority.

5. FIELD REPORT: A separate report, and two copies thereof, embracing the foregoing facts and any other information indicating abandonment of the operation, together with a recommendation of the field staff member, should be prepared and submitted to the regional director for his concurrence or recommendation. The regional director shall forward the original and one copy of the completed report and recommended action to the Section of Water Carriers and Freight Forwarders. Such reports must be factual to the extent obtainable, as it is intended that the information therein will be made of record for the purpose of instituting a revocation proceeding, should one be deemed appropriate.

R. D. Pfahler
Director

INTERSTATE COMMERCE COMMISSION
BUREAU OF OPERATIONS
WASHINGTON, D.C.

Field Staff Manual - Part IV
Section H-1*

TO THE FIELD STAFF:

SUBJECT: Credit Regulations

1. WATER CARRIERS: Part 1323 of 49 CFR sets forth the Commission's prescribed rules governing the settlement of rates and charges of common carriers by water subject to part III of the act. These rules determine the precautions which must be taken by the carrier before relinquishing freight in advance of the payment of charges, the periods of credit which may be extended, and the computation of such periods. The field staff should take the necessary measures to enforce these rules and regulations.

2. FREIGHT FORWARDERS: Pursuant to 49 CFR 1324.1 the same rules prescribed in 49 CFR 1322 for motor common carriers subject to part II of the act governing the extension of credit have been made applicable to freight forwarders subject to part IV of the act. The field staff should familiarize themselves with these rules as set forth in the Code and take the necessary measures to enforce freight forwarder compliance.

R. D. Pfahler
Director

FSM - Part IV, Sec. H-1, Page 1, June 27, 1969

*CANCELS: Operations Manual L-3 as it applies to forwarders.

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INTERSTATE COMMERCE COMMISSION
BUREAU OF OPERATIONS
WASHINGTON, D.C.

Field Staff Manual - Part IV
Section J-1

TO THE FIELD STAFF:

SUBJECT: Compliance Reports - Water Carriers and Freight Forwarders
Form BOp Field No. 4

Contents

1. GENERAL: Administration and enforcement of the various provisions of Parts III and IV of the Act and the pertinent rules and regulations of the Commission requires periodic compliance surveys of the operations of water carriers and freight forwarders subject to the jurisdiction of the Commission. Such surveys may be performed by any qualified staff member of the Bureau.

2. PURPOSE OF COMPLIANCE REPORT: An important responsibility of the Bureau is the conduct of surveys to determine the overall general compliance and rate compliance by authorized water carriers and freight forwarders. These activities, for reporting purposes, shall all be known as "General Compliance Surveys." Separate "Rate Compliance

Surveys" of water carriers and freight forwarders are not contemplated. Thus, a compliance survey of a water carrier or freight forwarder will be all inclusive and shall embrace findings of failure to comply with applicable economic regulations and provisions of the Act, including those dealing with tariffs or schedules, rates and charges.

General Compliance Surveys of water carriers and freight forwarders are intended to: (1) detect and record examples of failure to comply with Parts III and IV of the Act and the regulations of the Interstate Commerce Commission, (2) establish knowledge on the part of the water carrier and freight forwarder as to its responsibility to comply with the regulations applicable to its specific operations, (3) assist the carrier or forwarder to understand and know the regulations, and (4) to report the findings.

3. USE OF COMPLIANCE REPORT: (a) Form BOp Field No. 4 shall be used to report findings in general compliance surveys of all types of authorized water carriers and freight forwarders, and water carriers holding certificates or orders of exemption. Form BOp Field 4 shall not be prepared upon the operations of any water carrier or freight forwarder, except those holding a certificate, permit, temporary authority, or exemption order.

(b) Review of water carrier or freight forwarder file: Prior to the general compliance survey, the complete Bureau file of the respondent must be reviewed.

(c) Entries on Report: Entries upon Form BOp Field 4 may be typewritten, hand lettered, or written in longhand. All entries upon the report must be neat and legible. Absolute legibility is a must requirement. Regional directors shall not accept illegible reports.

(d) Preparation and Distribution of Compliance Report:

i. Compliance surveys made in regional office area:

Prepare - Original of Parts One, Two, and Three and one copy of Parts One and Two.

Distribution - Original of Parts One, Two, and Three for supervisors' files.

The one copy of Parts One and Two together with applicable penalty provisions to the water carrier or freight forwarder, (See note).

ii. Compliance surveys made in area office territory:

Prepare - Original of Parts One, Two, and Three. Two copies of Parts One and Two. One copy of Part Three.

Distribution - Original of Parts One, Two and Three for area supervisor. One copy of Parts One, Two and Three to the regional director.

One copy of Parts One and Two together with applicable penalty provisions to the water carrier or freight forwarder (See note).

iii. Compliance surveys of water carriers or freight forwarders domiciled in another region:

Prepare - Original of Parts One, Two, and Three. Three copies of Parts One and Two. Two copies of Part Three.

Distribution - Originals and one copy of Parts One, Two, and Three to the regional director of the area in which the water carrier or freight forwarder is domiciled.

One copy of Parts One, Two, and Three for investigator.

One copy of Parts One and Two together with applicable penalty provisions to the water carrier or freight forwarder (See note).

Note: Instances where the operation is found in complete compliance with all regulations, Do Not request a signature for receipt of a copy or furnish copies of the report to the water carrier or freight forwarder. Such extra copy should be destroyed.

(e) Regional directors review of Forms BOp Field 4: Regional directors shall review each water carrier and freight forwarder general compliance survey report. Review is necessary for continued evaluation of the adequacy as to the quality of work performance by the field staff; for uniform understanding of Field Staff Manual instructions and procedures; and for consistent administration of the Act and regulations.

(f) Discussion with water carrier or freight forwarder representative: Upon completion of the investigation, the findings of the survey shall be discussed with a responsible official. Such officials shall be requested to sign his name in each space provided for the receipt on Parts One and Two. After obtaining his signature in receipt, the first carbon copy of Part One and each sheet of Part Two shall be given to the officials.

WHEN VIOLATIONS ARE NOTED, THE APPROPRIATE COPIES OF FORM BOp FIELD 4 SHALL ALWAYS BE GIVEN TO THE WATER CARRIER OR FREIGHT FORWARDER. THE FACT THAT AN INVESTIGATION IS BEING MADE OR IS CONTEMPLATED SHALL HAVE NO BEARING UPON THIS STANDARD POLICY.

If after being tactfully advised that his signature constitutes only a receipt for the report, the official refuses to sign his name, then under no circumstances will a copy be left with the water carrier or freight forwarder. In every such case the appropriate copy of the report and transmittal letter shall be mailed to the water carrier or freight forwarder by certified mail.

(g) Warning letters confirming findings: One important goal in designing the format of Form BOp Field 4 was to improve manpower control and utilization. Warning letters confirming findings of a general or rate compliance survey have been discontinued. Discontinuance of warning letters definitely places

greater importance upon the need for clear and concise communications in Part Two of Form BOp Field 4.

In some instances facts of findings may involve issues which are questionable, debatable, or require confirmation or interpretation. Such findings shall not be entered upon Part Two of Form BOp Field 4. When it has been determined that such findings constitute violations, a warning letter confirming the fact shall be mailed to the water carrier or freight forwarder. These warning letters shall not repeat the citations already entered upon Part Two of Form BOp Field 4, but shall be confined to the additional findings. Examples of such findings would be complex points, intricate or ambiguous regulatory language, such as territorial or commodity authorities difficult to interpret, rate or tariff matters requiring Bureau of Traffic counsel, report filings not verifiable at time of survey but later verified, etc.

4. INSTRUCTIONS FOR ENTRIES - FORM BOp FIELD 4:

PART ONE

Title of Form: As noted above, all compliance surveys of water carriers and freight forwarders will be "General." Therefore, enter an "X" in the appropriate box to indicate a general compliance report.

A - Identification:

Name - Enter the name of the water carrier or freight forwarder as it appears on its certificate or permit.

Street Address: Enter the street address, rural route number, box number, etc., as applicable.

City and State, Zip Code: Enter the city, state, and ZIP Code.

If the water carrier or freight forwarder has an address different from that contained in Commission's records, handle in accordance with outstanding instructions concerning water carriers and forwarders.

B - Structure of Operation: Enter an "X" in the appropriate box. If operations is a corporation, also enter the state of charter and date. The year of incorporation will suffice if the actual date is not readily available.

C - Type of Operation: As to water carriers: Enter the letter A, B, or C in the applicable box following "Passengers" or "Property" to indicate the water carrier's class as defined in 49 CFR 1240.2. Enter an "X" in applicable box to indicate 302(d) - common carrier, 302(e) - contract carrier or Exemption Order. The 302(e) box should be changed appropriately, if the exemption is held under section 303(e) or 303(h). Enter the water carrier's certificate, permit, and/or exemption number in the space following "Docket No."

As to freight forwarders: Enter the letter A or B in the box following "Property" to indicate the freight forwarder's class as defined in 49 CFR 1240.6. Enter an "X" in applicable box to indicate 402(a)(5) freight forwarder. Enter the freight forwarder's permit number in the space following "Docket No."

General geographical area traversed: Enter the States served or the general geographical area, for example: "Middle West States" or "Mississippi and Ohio River ports." Do not enter the carrier's authority description.

Classification: The box "classification" is left blank.

D - Equipment: (Use figures based on time of survey).

Owned: Enter that equipment registered in the carrier's or freight forwarder's name.

Leased 30 days or more: Enter that equipment leased or otherwise contracted for more than 30 days.

Leased less than 30 days: Enter that equipment leased or otherwise contracted for less than 30 days.

Do not enter equipment leased to another carrier or forwarder.

Non-owned equipment operated by the carrier or forwarder in interchange service shall be considered "leased less than 30 days."

E - Persons interviewed during this survey: Enter the first name, middle initial, if any, (enter "None" if no middle name) and last name of each person interviewed and his or

her title. Form BOp Field 4 provides spaces for seven persons' names only. If more than seven are interviewed enter below the last named person, "Plus (number) others in organization." An important factor here is to identify and to record the names of responsible persons interviewed. When it is necessary to make a choice of persons listed by name, be sure to enter by name those officials whose day to day duties are associated with your findings of failure to comply with the Act or regulations. For example if the major and important findings included Part 1323.5 violations, the name or names of responsible person(s), i.e., who supervise the billing of freight charges should be entered. On the other hand, if the carrier was in compliance with Part 1323.5, it would not be as important to include the names of persons who supervise such billing. Entry of the title "Secretary" shall be construed to mean a corporation secretary. Employees who perform the usual secretarial duties shall be entered "Secretary - clerical" or "Secretary - claim department" etc.

Acknowledgement and receipt: Enter the number of sheets of Part Two which are attached to the report together with notice of penalty provisions applicable to either water carriers or freight forwarders.

Date of Survey: Enter the date or dates of the survey.

Date Copy Received: Enter the date which the water carrier's or freight forwarder's copy was given to a responsible official.

Reported by: Enter your signature.

Title: Enter your title.

Received by: Obtain the signature of a responsible official in this space.

Title: Enter the title of the official receipting for the report.

PART TWO

Title of Form: As noted for Part One, enter an "X" in the appropriate box to indicate report is a general compliance survey report.

Name: Enter the name in the same manner as in Part One.

City and State: Enter city and state only. No street, P. O. Box, etc. is necessary in this Part.

Findings and examples of failure to comply: Enter the section number of 49 CFR or the Act which is the authority for the finding recorded.

Description of findings: All findings shall be entered in the form and manner set forth in Appendix "A" applicable to water carriers, and Appendix "B" applicable to freight forwarders. Each appendix contains briefly worded descriptions of those types of violations most frequently found during compliance surveys. These descriptions were composed after careful study of the uniform counts used by the Bureau of Enforcement in informations charging violations. They are intended to accomplish uniformity and clarity in notifying the water carriers or freight forwarders of a finding. When findings not listed in the appendix are discovered, the staff member should adapt meaningful descriptive terms to describe such finding.

Number discovered: Enter the actual number discovered in those cases where only a few of the same kind of findings are discovered. When many of the same findings are discovered it is not necessary to make a count of each and every one. In such cases a conservative estimate will be permissible, such as "in excess of" or "at least" (50 to 100 etc.) Entries such as "many," "frequent," "some", etc., shall not be used since these terms are meaningless. The important factor here is that the entry should serve as a true indication of the frequency and pattern of the specific finding reported. To promote uniformity of reporting the number discovered, the method of arrival at numbers to be entered is described under each description of various types of findings in the appendice

Examples: At least one supporting example must be entered below each type of finding cited. Supporting examples shall be briefly but clearly stated. In most instances the supporting example can clearly be illustrated by identifying a supporting shipping document and date of shipment or other brief referral. The appendices to the manual contain samples of entries to refer to findings. In no case shall more supporting examples be entered than can be neatly and clearly entered in the space provided in the block for the finding cited.

Date of Survey: Enter the date or dates of the survey. When more than one sheet of Part Two is used, the dates of survey shall be entered on each sheet.

Reported By: Enter your signature. When more than one sheet of Part Two is used, your signature shall be entered on each sheet.

Received By: Obtain the signature of a responsible official. When more than one sheet of Part Two is used, the official's signature shall be obtained for each sheet.

PART THREE

PART THREE IS TO BE COMPLETED FOR BUREAU FILES ONLY - NO COPY FOR THE WATER CARRIER OR FREIGHT FORWARDER.

Title of Form: As noted for Part One, enter an "X" in the appropriate box to indicate report is a general compliance survey report.

Name of Carrier: Enter the name in the same manner as in Part One.

City and State: Enter city and State only. No street, P. O. Box, etc., is necessary in this Part.

1. Dates of compliance survey reports during past five years: Enter the dates only of past compliance survey reports.

2. Dates, numbers, and disposition of all investigation reports not assigned a final status during the past five years: Enter the dates, numbers and brief account of disposition.

3. Dates, numbers and disposition of all final investigation reports during the past five years: Enter the dates, numbers, and brief account of disposition.

4. Indicate Parts covered by this investigation: Enter in each block the word "yes", "no" or "partial" to indicate coverage. Each entry in this item is important for reasons as (1) it makes a record of those applicable Parts of the regulations which were covered; (2) it records for future reference those Parts of the regulations which were not covered; (3) it may provide justifiable reason that a staff member was unable to discover violations; (4) it assists persons who review, evaluate, and make use of the reports; and (5) in frequent cases it will further indicate the logic of your statement of planned course of action in Item 7.

5. Annual gross revenue past three years: Enter the water carrier's or forwarder's gross revenue for each of the past three full calendar years. Compute and enter the average gross revenue for the past three calendar years. It is no longer necessary to notify the Bureau of Accounts of a classificiation change since this information has been previously received and computerized.

6. Delinquent accounts receivable: As to contract carriers and passenger carriers by water, this item shall be left blank. As to common carriers of property and freight forwarders, enter the number of delinquent freight bills, the number of shippers involved, and the total amount in dollars of delinquent accounts receivable. For purpose of uniformity, entries in these blocks shall be the totals delinquent as of the day of the survey.

In cases involving a magnitude of credit violations, it is not intended that each and every bill should be examined. It will be deemed proper to request the carrier or forwarder to compile data for entry in this item. However, sufficient inspection of the delinquent accounts must be made to determine if concessions are given to preferred shippers.

7. Statement of planned course of action to be taken: Entry here may be brief, but it MUST be definite. Regional directors shall not accept Form BOp Field 4 with vague, ambiguous, or indefinite statements of planned courses of action. Upon completion of the survey, the facts should be analyzed and a logical course of action planned. In short - "PLAN YOUR WORK AND WORK YOUR PLAN." Some significant factors to consider in planning a course of action are:

    1. What is the background history of noncompliance?
    2. Were the findings a pattern of knowing disregard or were they isolated or accidental?
    3. Were they important areas of compliance that you were unable to factually cover? (refer to your entries in item 4 or Part Three)
    4. Did your findings include some facts in need of additional research, inquiry, or interpretation?

    It is not wanted that a large percentage of compliance surveys be scheduled for follow-up surveys. In other words, administrative action should end and enforcement action begin. If noncompliance continues, the next action should be more forceful. If the planned course of action is the preparation of an investigation report, a brief statement should be made of the types of violations which will be reported.

8. Effective dates of outstanding notices of embargo: This item shall be left blank.

9. Probable leads to follow and sources of information for future investigations: This space is provided to preserve notes concerning sources of information and leads to follow in future investigations. Advance knowledge of such information may save many hours of work when another staff member calls upon the same water carrier or freight forwarder. This information is not intended to apply merely to the subject who refuses to submit records or who attempts to hide facts. Quite frequently during a survey, a staff member will discover one, two, or three basic source records or company procedures which provide an easy and systematic means to check various phases of compliance. It is information along these lines that may prove helpful in future contacts with the water carrier or freight forwarder. Wide latitude is given to whatever information the staff member warrants to be noted in this item.

10. Months of operations covered during this investigation: Enter the months selected for examination and inspection. In every case the findings reported in Part Two of Form BOp Field 4 shall be those committed during the months selected for examination. It is not intended that a staff member should be tied to any certain time period to be covered in making a survey. However, experience has taught us that it is a good policy to select the most recent three to six months of operations.

11. Submitted by: Enter your signature and title.

5. WATER CARRIER OR FREIGHT FORWARDER SELECTION: (a) Water carriers and forwarders headquartered in region: Ideally, the field program should be planned so that each water carrier and forwarder is given a general compliance survey within each five consecutive years. Such surveys, consistent with the region's manpower capability, should be made at least within the annual goals established for the field work program. However, when the field staff has received a complaint, or has knowledge that noncompliance may exist, the water carrier or forwarder will be scheduled for a compliance survey within 90 days. The regional director shall assign such qualified staff members to carry out the established work goals. It is not expected that a large number of compliance surveys be scheduled for reinspections for the purpose of verifying corrective actions by the carriers -- repeat! "When does enforcement begin?" If noncompliance continues, the next action should be more forceful.

The following are suggestions for programming and selection of water carriers or freight forwarders for compliance surveys:

water carriers or freight forwarders subject of frequent jurisdictional complaints;

data from observations, etc., indicating noncompliance with economic regulations;

continued failure to file required reports, answer correspondence, etc.;

applicants filing for operating authority, extensions, transfer of rights, suspected cessation of portions of operating authorities, etc.

carriers filing frequent applications for temporary authority; and

newly authorized water carriers or freight forwarders.

(b) Compliance Surveys At Terminals Other Than Carrier's Headquarters: Field Staff Manual Part V, Section B-1 contains instructions pertaining to the handling of complaints at the local level. Often times this is the base of the problem. Therefore, if a complaint is received or information obtained indicating violations, the staff should upon assignment by the Regional Director or within the framework of existing instructions conduct surveys at any of a carrier's or forwarder's terminal without regard to regional jurisdiction. It is believed that such procedure will provide opportunity for disclosure of more basic violations at their source. A reasonable percentage of a staff member's total annual compliance survey program shall be conducted at such terminals.

R. D. Pfahler
Director

FSM - Part IV, Sec. J-1, Page 13, January 10, 1974
cancels
FSM - Part IV, Sec. J-1, Page 13, January 15, 1970

Revision
No. 342

WATER CARRIERS

Appendix A
FSM-Part IV, Sec. J-1*

Part	Prescribed Entry	Number Discovered	Example
	Operating Without Authority Common Carrier - 309 The Act		
309(a)	Engaging in operations beyond the scope of authorized certificate.	One each shipment	Date, bill number, origin or destination not authorized.
309(a)	Transporting commodity not authorized in certificate.	One each shipment	Date, bill number, commodity not authorized.
	Operating Without Authority Contract Carrier - 302 - 309 The Act		
309(f)	Engaging in operations beyond the scope of authorized permit.	One each shipment	Date, bill number, origin or destination not authorized.
302(e)	Furnishing vessels without exemption to persons other than carriers subject to the Act.	One each movement	Furnish brief statement of arrangement.

NOTE: All findings of failure to comply with regulations pertaining to rate and tariff matters shall be cited by reference to sections of the Act or by sections from the Code of Federal Regulations. Do not enter citations in the form of rule numbers from any tariff circular.

	Contract Carrier - Property Freight Rate Schedules - Part 1308 C.F.R. Section 306 The Act		
306(e)	Charging less compensation than minimum rate specified in applicable schedule.	One each shipment	Date of shipment, bill number, or reference to invoice, rate charged, lawful rate.

*CANCELS: Operations Manual Y-9, Appendix E

Part	Prescribed Entry	Number Discovered	Example
306(e)	Failing to observe schedule rule.	One each rule	Description of rule and cite exception.
1308.1 (c)	Failing to publish and/or file schedule stating minimum rates and charges actually maintained and charged.	One each schedule	Reference to schedule and brief explanation of exception.
1308.106	Failing to keep available for public inspection at headquarters a complete file of all effective schedules.	One each schedule	Cite schedule not on file.
1308.101 1308.105	Failing to comply with rules governing construction, filing and changes in schedules.	One each schedule	Cite schedule and errors in construction filing, and/or unauthorized changes.

Freight Tariffs of Common Carriers
Part 1308 - C.F.R. - Sections 305 and 306 The Act

305a	Failing to observe tariff rule.	One each shipment	Date, freight bill, explanation of failure.
306(a) 1308.1 1308.4	Failing to (publish), (file), (post), tariff in form and manner prescribed.	One each tariff	Cite tariff, and furnish statement of failure and refer to appropriate section of Part 1308.
306(c)	Charging (less) (greater) compensation than specified in tariff.	One each shipment	Date, freight bill number, rate applied, lawful rate, and brief statement.
306(c)	Performing (description of special service, i.e.) C.O.D. service without tariff charge or rule governing such service.	One each shipment	Date, freight bill number, brief statement of service performed.

Lone

Part	Prescribed Entry	Number Discovered	Example
306(d)	Transporting property without rates on file.	One each shipment.	Date, freight bill number, and brief statement that no rate in tariff applies.
1308.5	Failing to publish (changes), (supplements), (amendments) in form prescribed	One each tariff.	Identify tariff, change or supplement and furnish explanation of exception.
	Examination of Records and Accounts - Section 313 The Act		
313(f)	Failing to submit records to duly authorized representative upon demand and display of proper credentials.	One each record.	Date, statement as to denial and person denying access.
	Passes and Free Transportation Part 1270 C.F.R. - Section 306 The Act		
306(c)	Issuing pass to person not authorized to receive free transportation.	One each pass	Date and statement of unauthorized issuance.
1270.54	Failing to keep record of passes issued.	One each record.	Statement of recording failure.
	Destruction of Records Part 1227 C.F. R.		
1227.0	Failing to preserve records in accordance with prescribed period of retention.	One each record	Cite item number, name of record, and prescribed period of retention.

FSM - Part IV, Sec. J-1, Appendix A, Page 3, March 1, 1975
cancels
FSM - Part IV, Sec. J-1, Appendix A, Page 3, January 15, 1970

Revision
No. 444

Part	Prescribed Entry	Number Discovered	Example
1227.2	Failure to obtain authority to destroy records not named or described in regulations.	One each record	Cite name of records.
1227.5	Failing to keep record of all records destroyed.	One each record	Brief statement of responsibility to keep such record.
	Deliquent Reports 317(d) of the Act		
317(d)	Failing to timely file (identity of report) with the Commission.	One each report.	Identify report, number of days overdue, and brief statement - (give date due).
	Extension of Credit to Shippers Part 1323 C. F. R.		
1323.5	Failing to present freight bills within time prescribed.	One each shipment	Identify billing and furnish brief statement of circumstances.
1323.2 or 1323.3	Failing to collect freight charges within credit periods allowed.	One each shipment	Date of freight bill and number date of payment (if received).

FSM - Part IV, Sec. J-1, Appendix A, Page 4, March 1, 1975
cancels
FSM - Part IV, Sec. J-1, Appendix A, Page 4, January 15, 1970

LOSS AND DAMAGE CLAIMS - PART 1005 C.F.R.
EX PARTE NO. 263

1005.3(a)	Failing to acknowledge claims within 30 days after receipt.	One each shipment	Date, bill number, claim identification
1005.3(b)	Failing to create a separate claim file and/or assign a successive number on each claim.	One each shipment	Date, bill number, claim identification
1005.5	Failing to pay, decline, or make firm compromise settlement offer in writing within 120 days after receipt of claim.	One each shipment	Date, bill number, claim identification
1005.5	Failing to advise claimant in writing of claim status and reason for delay in final disposition of claim.	One each shipment	Date, bill number, claim identification
1005.6(a)	Failing to maintain record of salvage property required to correlate it to shipment or claim.	One each shipment	Date, bill number, claim identification
1005.6(c)	Failing to record in claim file all prescribed information respecting processed salvage	One each shipment	Date, bill number, claim identification list of items not recorded.
Ex Parte 263	Failing to (file)-(post), in tariff form, rules and practices pertaining to the processing and disposition of loss and damage claims.	One each finding	Brief discription
Ex Parte 263	Failing to file contracts, agreements, or arrangements between or among carriers, pertaining to processing and disposition of loss and damage claims.	One each finding	Date, document identification

FREIGHT FORWARDERS

Appendix B
FSM-Part IV, Sec. J-1*

Part	Prescribed Entry	Number Discovered	Example
	Operating Without Authority - Section 410(a) The Act		
410(a)	Engaging in operations beyond the scope of authorized permit.	One each shipment	Date, bill number, origin or destination not authorized.
410(a)	Transporting commodity not authorized in permit.	One each shipment	Date, bill number, commodity not authorized.
	Receipts and Bills of Lading Part 1081 C.F.R. and Sec. 413 The Act		
1081.1 413	Failing to issue receipt or bill of lading.	One each shipment	Date, shipper, commodity description.
	Contracts, Freight Forwarders - Motor Common Carriers Part 1080 C.F.R. Sec. 409 The Act		
1080.1 409(b)	Failed to file contract to cover description of transportation performed by common motor carrier pursuant to Section 409.	One	Furnish brief explanation of failure to comply Name motor carrier and extent of operations.
409(a) 217(b)	Failed to pay, and motor carrier received, less compensation for transportation of truckload lots in violation of Sections 409(a) and 217(b).	One	Describe service performed, points served, dates, rate applied, and lawful rate.
1080.4	Failed to file notice of termination of contract.	One	Identify terminated contracts.

Part	Prescribed Entry	Number Discovered	Example
	Freight Tariffs - Part 1309 C.F.R. and Sections 404 and 405 The Act		
404(a)	Failing to observe tariff rule.	One each shipment	Date, freight bill number, brief explanation of failure.
405(a)(b) 1309.1 1309.4	Failing to (publish) (file) (post) tariff in form and manner prescribed.	One each separate finding	Cite tariff and furnish brief explanation of failure.
1309.4	Failing to post at principal office a complete file of all tariffs.	One each tariff	Cite tariff not posted.
1309.4	Failing to post at each station a file of tariffs applying to all traffic from and at such station.	One each tariff	Identify station and tariff not posted.
405(c)	Charging (less) (greater) compensation than specified in tariff.	One each shipment	Date, freight bill number, and brief explanation.
405(c)	Performing (description of special service, i.e.) C.O.D. service without a tariff containing rates, charges, or rules governing such service.	One each shipment	Date, freight bill number, and brief explanation.
405(e)	Transporting property without rates being filed and published.	One each shipment	Date, freight bill number, and brief explanation.
	Surety Bonds and Policies of Insurance Part 1084 C.F.R.		
1084.2(b)	Engaging in interstate commerce without public liability and property damage insurance.	One each day transportation is performed.	Date, shipping document.

Part	Prescribed Entry	Number Discovered	Example
1084.2(a)	Engaging in interstate commerce without cargo insurance.	One each day transportation is performed.	Date, shipping document.
	Examination of Records and Accounts, Etc. Section 412(d) The Act		
412(d)	Failed to submit records to duly authorized representative upon demand and display of proper credentials.	One each record	Date, specific record access to which denied, and name of person denying access.
	Extension of Credit to Shippers Part 1324 C.F.R. (Part 1322)		
1324.1 (1322.3)	Failing to present freight bill within seven days after delivery of shipment.	One each shipment	Delivery receipt, number, date of delivery, and date of freight bill and number.
1324.1 (1322.1)	Failing to collect freight charges until after seven days from presentation of freight bill.	One each shipment	Date of freight bill and number, date of payment (if received).
	Destruction of Records - Part 1228 C.F.R.		
1228.1	Failing to preserve records in accordance with prescribed period of retention.	One each record	Cite item number, name of record, and prescribed period of retention.
1228.4	Failing to designate an officer, or officers to supervise the destruction of records.	One	Brief statement of responsibility to designate.
1228.[illegible]	Failing to keep a record of all records destroyed.	One each record	Brief statement of responsibility to keep such record.

Part	Prescribed Entry	Number Discovered	Example
	Annual and Quarterly Reports Part 1251 C.F.R.		
1251.1 (Class A) 1251.2 (Class B)	Failing to file or make timely filing of annual report.	One	Identify report and circumstances.
1251.3	Failing to file quarterly reports (by freight forwarders having annual gross revenues of $100,000 or more).	One	Quarter(s) not reported - Form QFF.
	Filing of Contracts for Joint Loading and Terminal Service and Facilities Part 1083		
1083.1	Failing to file contracts for joint loading and for all terminal services and facilities.	One each shipment	Furnish brief explanation of services performed.

LOSS AND DAMAGE CLAIMS - PART 1005 C.F.R.
EX PARTE NO. 263

1005.3(a)	Failing to acknowledge claims within 30 days after receipt.	One each shipment	Date, bill number, claim identification
1005.3(b)	Failing to create a separate claim file and/or assign a successive number on each claim.	One each shipment	Date, bill number, claim identification
1005.5	Failing to pay, decline, or make firm compromise settlement offer in writing within 120 days after receipt of claim.	One each shipment	Date, bill number, claim identification
1005.5	Failing to advise claimant in writing of claim status and reason for delay in final disposition of claim.	One each shipment	Date, bill number, claim identification
1005.6(a)	Failing to maintain record of salvage property required to correlate it to shipment or claim.	One each shipment	Date, bill number, claim identification
1005.6(c)	Failing to record in claim file all prescribed information respecting processed salvage	One each shipment	Date, bill number, claim identification list of items not recorded.
Ex Parte 263	Failing to (file)-(post), in tariff form, rules and practices pertaining to the processing and disposition of loss and damage claims.	One each finding	Brief discription
Ex Parte 263	Failing to file contracts, agreements, or arrangements between or among carriers, pertaining to processing and disposition of loss and damage claims.	One each finding	Date, document identification

This appendix consists of sample General Compliance Reports completed on Form BOp Field 4. These survey reports have been completed substantially in accordance with the guidelines set forth in FSM - Part IV, Sec. J-1. They are to be considered as visual aids to illustrate proper preparation of Form BOp Field 4 and should be placed in the manual as a part of FSM - Part IV, Sec. J-1.

Attachment One: General Compliance Report of operations of Federal Barge Lines, Inc. - a class A water carrier of property.

Attachment Two: General Compliance Report of operations of Merchants Shippers, Inc. - a class A freight forwarder.

SAMPLE

INTERSTATE COMMERCE COMMISSION
BUREAU OF OPERATIONS
COMPLIANCE REPORT
☐ RATES --- GENERAL ☒
PART ONE

A. IDENTIFICATION

NAME: FEDERAL BARGE LINE, INC.

STREET ADDRESS: 611 EAST MARCEAU STREET

CITY, STATE, & ZIP CODE: ST. LOUIS, MO. 63111

B. STRUCTURE OF OPERATION

INDIVIDUAL ☐ PARTNERSHIP ☐ CORPORATION ☒ STATE: MISSOURI DATE: 12-30-48

C. TYPE OF OPERATION

PASSENGERS ☐ 203(a)(14) ☐ 302(d) ☒ 402(a)(5) ☐ EXEMPTION ORDER ☐ 203(a)(18) ☐
PROPERTY A 203(a)(15) ☐ 302(e) ☐ 5a ☐ DOCKET NO. W-381
1040.1(a) ☐ 1040.1(b) ☐ 1040.1(c) ☐ 1040.1(d) ☐ 1040.1(e) ☐

GENERAL GEOGRAPHICAL AREA: CENTRAL-SOUTHERN STATES

CLASSIFICATION (PART 1010):

D. EQUIPMENT

	TRUCKS	TRUCK TRACTORS	SEMI-TRAILERS	FULL TRAILERS	BUSES	SELF-PROPELLED VESSELS	TOWBOATS	BARGES
OWNED:							10	300
LEASED 30 DAYS OR MORE:							2	15
LEASED LESS THAN 30 DAYS:								

E. PERSONS INTERVIEWED DURING THIS SURVEY

NAME:	TITLE:
JOHN JONES	TRAFFIC MANAGER
THOMAS SMITH	DISPATCHER
WILLIAM CLINK	ACCOUNTING SUPERVISOR
JOHN MARKEY	VICE PRESIDENT

This is to acknowledge that a copy of this part together with ONE *of part two, notice of findings, and a notice of the penalty provisions of the Interstate Commerce Act applicable to* PART III *have been given to me this date. It is understood that nothing in this report shall be construed as an indication that any findings shown herein are condoned by the Interstate Commerce Commission.*

DATES OF SURVEY: MARCH 4, 5, 1975

DATE COPY RECEIVED: MARCH 5, 1975

REPORTED BY: S/ DAVID SMITH

TITLE: DISTRICT SUPERVISOR

CODE:

RECEIVED BY: S/ JOHN MARKEY

TITLE: VICE PRESIDENT

FSM - Part IV, Sec. J-1, Appendix C, Page 2, March 10, 1975 cancels

FORM BOP FIELD 4 REV. FEB. 1968

FSM - Part IV, Sec. J-1, Appendix C, Page 2, January 15, 1970
Revision No. 446

INTERSTATE COMMERCE COMMISSION
BUREAU OF OPERATIONS
COMPLIANCE REPORT
☐ RATES --- GENERAL ☒
PART TWO

NAME: FEDERAL BARGE LINES, INC.
CITY AND STATE: ST. LOUIS, MO. 63111

NOTICE OF FINDINGS

TITLE 49, CFR SECTION 1323.3
IC ACT SECTION

FAILING TO COLLECT FREIGHT CHARGES WITHIN CREDIT PERIOD.

NUMBER DISCOVERED: 10

EXAMPLE (S) OF FINDING:

FREIGHT BILL #6040
SHIPMENT DELIVERED 1-10-75
FREIGHT BILL DATE 1-11-75
FREIGHT CHARGES UNPAID AS OF MARCH 5, 1975

TITLE 49, CFR SECTION 1005.3(a)
IC ACT SECTION

FAILING TO ACKNOWLEDGE CLAIMS WITHIN 30 DAYS AFTER RECEIPT.

NUMBER DISCOVERED: 2

EXAMPLE (S) OF FINDING:

FREIGHT BILL #6000 - JANUARY 9, 1975
CLAIM ALLEGING DAMAGED STEEL FILED JANUARY 11, 1975,
NOT ACKNOWLEDGED AS OF MARCH 5, 1975

TITLE 49, CFR SECTION
IC ACT SECTION 309(a)

ENGAGING IN OPERATIONS BEYOND THE SCOPE OF AUTHORIZED CERTIFICATE.

NUMBER DISCOVERED: 1

EXAMPLE (S) OF FINDING:

BILL OF LADING #1920 - DECEMBER 6, 1974
FREIGHT BILL #5800 SHIPMENT OF STEEL

DELIVERED AT PITTSBURGH, PA., A POINT NOT AUTHORIZED TO BE SERVED.

DATES OF SURVEY:	REPORTED BY:	RECEIVED BY:
MARCH 4, 5, 1975	S/ DAVID SMITH	S/JOHN MARKEY

FSM - Part IV, Sec. J-1, Appendix C, Page 3, March 10, 1975
FSM - Part IV, Sec. J-1, Appendix C, Page 3, January 15, 1970 cancels

FORM BOp FIELD 4
REV. FEB. 1966

SAMPLE

INTERSTATE COMMERCE COMMISSION
BUREAU OF OPERATIONS
COMPLIANCE REPORT
RATES --- GENERAL XX
PART THREE

NAME: FEDERAL BARGE LINES, INC.
CITY AND STATE: ST. LOUIS, MO. 63111

1: DATES OF COMPLIANCE REPORTS DURING PAST FIVE YEARS:

JANUARY 15, 1972

2: DATES, NUMBERS AND DISPOSITION OF "36" REPORTS OR INVESTIGATION REPORTS PAST FIVE YEARS: *(other than safety)*

NONE

3: DATES, NUMBERS AND DISPOSITION OF "56" REPORTS OR FINAL INVESTIGATION REPORTS PAST FIVE YEARS. *(other than safety)*

NONE

4: INDICATE PARTS COVERED BY THIS INVESTIGATION

PART II	1040	1058	1045	1051	1053	1043	1135	1056	1020	1054	1134
1055	1052	1306	1307	1322	1046	1226	1249	1057	1047	1059	OTHER
PART III	1303	1250	1323	1308	1227	1270	OTHER				
YES	NO	YES	YES	YES	YES	NO	1005				
PART IV	1080	1084	1309	1324	1081	1251	1251	1083	1228	OTHER	
SEC. 5A	1331	1253	OTHER								

5: ANNUAL GROSS REVENUE PAST 3 YEARS:

1972	1973	1974	AVERAGE
$6,000,000	$7,000,000	$8,000,000	$7,000,000

6: DELINQUENT ACCOUNTS RECEIVABLE

NO. OF BILLS	NO. OF SHIPPERS	TOTAL AMOUNT IN DOLLARS.
2	2	$ 9000

7: STATEMENT OF PLANNED COURSE OF ACTION TO BE TAKEN: *(prepare attachment if additional space is required)*

NO FURTHER ACTION PLANNED AT THIS TIME

8: EFFECTIVE DATES OF OUTSTANDING NOTICES OF EMBARGO

9: PROBABLE LEADS TO FOLLOW AND SOURCES OF INFORMATION FOR FUTURE INVESTIGATIONS.

BILLS OF LADING
FREIGHT BILLS
BARGE POSITION REPORTS
ACCOUNTS RECEIVABLE

10: MONTHS OF OPERATION COVERED DURING THIS INVESTIGATION:

DECEMBER 1974, JANUARY - FEBRUARY 1975

11: SUBMITTED BY: S/ DAVID SMITH

TITLE: DISTRICT SUPERVISOR

Revision No. 447 FSM - Part IV, Sec. J-1, Appendix C, Page 4, March 10, 1975 cancels FSM - Part IV, Sec. J-1, Appendix C, Page 4, January 15, 1970

BOp FIELD 4 (9/70)

SAMPLE

INTERSTATE COMMERCE COMMISSION
BUREAU OF OPERATIONS
COMPLIANCE REPORT

☐ RATES --- GENERAL ☒

PART ONE

A. IDENTIFICATION

NAME: Merchant Shippers, Inc.

STREET ADDRESS: 1601 S. Western Avenue

CITY, STATE, & ZIP CODE: Chicago, Illinois 60608

B. STRUCTURE OF OPERATION

INDIVIDUAL ☐ PARTNERSHIP ☐ CORPORATION ☒ STATE: California DATE: 11-30-54

C. TYPE OF OPERATION

PASSENGERS ☐ 203(a)(14) ☐ 302(d) ☐ 402(a)(5) X EXEMPTION ORDER ☐ 203(a)(18) ☐

PROPERTY A 203(a)(15) ☐ 302(e) ☐ 5a ☐ DOCKET NO. FF-51

1040.1(a) ☐ 1040.1(b) ☐ 1040.1(c) ☐ 1040.1(d) ☐ 1040.1(e) ☐

GENERAL GEOGRAPHICAL AREA: East & Midwest States to West Coast

CLASSIFICATION (PART 1040):

D. EQUIPMENT

	TRUCKS	TRUCK TRACTORS	SEMI-TRAILERS	FULL TRAILERS	BUSES	SELF-PROPELLED VESSELS	TOWBOATS	BARGES
OWNED:								
LEASED 30 DAYS OR MORE:								
LEASED LESS THAN 30 DAYS:			7200					

E. PERSONS INTERVIEWED OURING THIS SURVEY

NAME:	TITLE:
Russ Torey	Vice President
John Kelly	Ass't. Secretary
James Grover	Traffic Manager
Hugo Zierfuss	A. T. M.
I. R. Berman	Executive Vice President

This is to acknowledge that a copy of this part together with one page *of part two, notice of findings, and a notice of the penalty provisions of the Interstate Commerce Act applicable to* freight forwarders *have been given to me this date. It is understood that nothing in this report shall be construed as an indication that any findings shown herein are condoned by the Interstate Commerce Commission.*

DATES OF SURVEY: Oct. 20, 23, 1968

DATE COPY RECEIVED: 10-24-68

REPORTED BY: s/ William J. Gray, Jr.

TITLE: District Supervisor

CODE:

RECEIVED BY: s/ I. R. Berman

TITLE: E. V. P.

FORM BOp FIELD 4 REV. FEB. 1968

SAMPLE

INTERSTATE COMMERCE COMMISSION
BUREAU OF OPERATIONS
COMPLIANCE REPORT
☐ RATES --- GENERAL ☒
PART TWO

NAME: Merchants Shippers, Inc.

CITY AND STATE: Chicago, Illinois 60608

NOTICE OF FINDINGS

TITLE 49, CFR SECTION:
IC ACT SECTION 404(a)

Failing to observe tariff rule

NUMBER DISCOVERED: 50

EXAMPLE (S) OF FINDING:

LA - 942-16 - 3/23/68 - Held at destination terminal to date
CSF - 577-12 - 5/5/68 - Held until 8/29/68 on destination dock

Shipments held at destination without storage charges being collected per your Tariff No. 22-A. FFTB-ICC FF-89, Storage Rules and Charges

TITLE 49, CFR SECTION: ~~1324.1~~ (1322.1)
IC ACT SECTION:

Failed to collect freight charges until after seven days from presentation of freight bill

NUMBER DISCOVERED: 491

EXAMPLE (S) OF FINDING:

LA - 2234-4 of 7/21/68 - Paid 10/17/68
Greenheck Fan & Vent

STLSW - 168-16 4/20/67 Unpaid to date

TITLE 49, CFR SECTION: 1080.4
IC ACT SECTION:

Failed to file notice of termination of contract

NUMBER DISCOVERED: 1

EXAMPLE (S) OF FINDING:

FF-C-2208 - Chicago Pool Car, Inc.
9/27/65

DATES OF SURVEY:	REPORTED BY:	RECEIVED BY:
Oct. 20, 23, 1968	s/ William J. Gray, Jr.	s/ I. R. Berman

FORM BOp FIELD 4
REV. FEB. 1966

SAMPLE

INTERSTATE COMMERCE COMMISSION
BUREAU OF OPERATIONS
COMPLIANCE REPORT
☐ RATES --- GENERAL ☒
PART THREE-PAGE ONE

NAME: Merchant Shippers, Inc.

CITY AND STATE: Chicago, Illinois 60608

1: DATES OF COMPLIANCE REPORTS DURING PAST FIVE YEARS:

4-10-69

2: DATES, NUMBERS AND DISPOSITION OF "36" REPORTS PAST FIVE YEARS: *(other than safety)*

NONE

3: DATES, NUMBERS AND DISPOSITION OF "56" REPORTS PAST FIVE YEARS: *(other than safety)*

NONE

4: INDICATE PARTS COVERED BY THIS INVESTIGATION:

PART II	1040	1058	1045	1051	1058	1043	1155	1058	1020	1054	1134
1055	1032	1306	1307	1322	1046	1228	1249	1057	1047	1059	OTHER
PART III	1303	1250	1323	1308	1227	1270	OTHER				
PART IV Yes	1080 Yes	1084 Yes	1309 Yes	1824 Yes	1081 Yes	1251 Yes	1251 Yes	1083 Yes	1225 Yes	OTHER	
SEC. 5A	1331	1253	OTHER								

6: ANNUAL GROSS REVENUE PAST 3 YEARS:

1965	1966	1967	AVERAGE
$15,731,410	$17,431,617	$18,945,345	$17,369,457

6: DELINQUENT ACCOUNTS RECEIVABLE

NO. OF BILLS	NO. OF SHIPPERS	TOTAL AMOUNT IN DOLLARS.
491	Numerous	$ 26,440

7: STATEMENT OF PLANNED COURSE OF ACTION TO BE TAKEN: *(prepare attachment if additional space is required)*

Final investigation to be recommended

8: EFFECTIVE DATES OF OUTSTANDING NOTICES OF EMBARGO:

9: PROBABLE LEADS TO FOLLOW AND SOURCES OF INFORMATION FOR FUTURE INVESTIGATIONS:

Freight Bills
Acct's Receivable
FF-MC Contracts

10: MONTHS OF OPERATION COVERED DURING THIS INVESTIGATION:

July, August, September 1968

11: SUBMITTED BY: s/ Willian J. Gray, Jr.

TITLE: District Supervisor

BOp FIELD 4 (1969)

INTERSTATE COMMERCE COMMISSION
BUREAU OF OPERATIONS
WASHINGTON, D. C.

Field Staff Manual - Part IV
Section K-1

TO THE FIELD STAFF:

SUBJECT: Embargoes

Contents

1. REQUIREMENTS: No rules or regulations have been issued by the Commission requiring any water carriers of property and freight forwarders subject to the Interstate Commerce Act to give notice of an embargo whenever it finds that it is or will be unable to perform all or part of its authorized transportation service, and that it will be necessary to suspend temporarily all or part of such service. It appears to be a general rule of law, however, that when goods are tendered for transportation, it is the duty of the water carrier or freight forwarder to give actual notice of such an embargo to the shipper.

Under sections 305(a) and 404(a) of the act, water carriers and freight forwarder, respectively, are required to provide their authorized service upon reasonable request. It appears to be the prevailing view of the courts, however, that common carriers, whenever necessary in the proper conduct of their business, may place an embargo on the transportation of property. Although we are not aware of any cases where the provisions of sections 305(a) and 404(a) have been tested with respect to embargoes, similar provisions of the act pertaining to rail carriers have been construed to apply only to the limit of the carrier's facilities. Thus, it appears that where, because of congestion at its facilities, strikes, or for some other uncontrollable physical reason, a water carrier or freight forwarder is unable

to handle traffic within a reasonable time, it may relieve itself of its obligation to accept freight by the placing of an embargo. As with the motor carrier embargo rule in 49 CFR 1059.3, we do not believe that the giving of notice of an embargo may be construed to relieve the water carrier or freight forwarder of its duty to furnish transportation service, nor to relieve it of the duty to observe all requirements of law and the Commission's regulations.

2. FIELD HANDLING AND INVESTIGATIONS: Notwithstanding the lack of Commission requirements, there are occasions when water carriers and freight forwarders subject to the act will give public notice of embargoes. In those instances and others which may come to the attention of the field staff, an investigation is not necessary, when the embargoes are due to situations such as work stoppage of widespread nature affecting the transportation industry, natural disaster etc., and any other situations which the district supervisor or regional director are familiar with to the extent that an embargo would be needed and/or practicable.

When an embargo does not fall into one of the categories described above, then an immediate inquiry should be made to determine:

(a) Whether or not the embargo is justified, and if the reasons for the issuance as stated by the carrier or forwarder are correct.

(b) The effect of the embargo upon traffic within the territory or to or from the points affected.

(c) If the embargo does not have an expiration date, the length of time the conditions may cause it to remain in effect.

(d) Whether or not the embargo is discriminatory as between shippers or carriers.

(e) What is being done to remove the cause of the embargo.

In summation, we are concerned as to why the embargo was issued, when it will be removed, and any other circumstances surrounding the embargo. Field staff members should, when in their opinion an unwarranted embargo is issued, attempt to handle

72-293 O - 76 - 36

with the carrier or forwarder administratively toward the end of having the embargo rescinded. If this proves unsuccessful, a report should be submitted to the Bureau of Enforcement for appropriate action.

3. OLD EMBARGOES: All justifiable embargoes which have been in effect for one month should be checked and, if it appears that there is no further jusitification for them, the carrier or forwarder involved should be contacted and an effort made to have such embargo canceled. Thereafter, a follow-up check should be made at the end of each succeeding month.

4. REPORTS: In each case where an investigation is made, the supervisor having jurisdiction over the carrier or forwarder will submit to the Chief of Water Carrier and Freight Forwarder Investigations, with copy to each interested staff member, a memorandum describing briefly the findings in the matter, action taken, whether cause therefor was or will be removed, and when the embargo will be canceled.

5. REASON FOR BOp ACTION: The Bureau's principal interest with respect to the removal of causes of embargoes is to keep essential traffic moving and to prevent traffic congestion. It is believed that our surveillance of embargoes will be beneficial to shippers, especially in the handling of small shipment complaints.

6. EMBARGOES ADOPTED BY PURCHASERS: When water carrier and freight forwarder certificates and permits are transferred, the purchaser presumably acquires any effective embargoes issued by the seller affecting such certificate or permit. Therefore, if the purchaser does not require the embargo, it should be canceled by the seller before the transfer is consummated. However, in the event it is not canceled prior to consummation, the purchaser should be requested to effect a cancellation of the embargo.

R. D. Pfahler
Director

FSM - Part IV, Sec. K-1, Page 3, January 15, 1974
cancels
FSM - Part IV, Sec. K-1, Page 3, May 1, 1970

Revision
No. 343

(5) Do your enforcement officials face barriers in gaining access to shippers' records? If so, please cite examples. What remedial steps has the ICC staff proposed to the Commission? What do you recommend in this regard?

Generally speaking, the Commission has no jurisdictional access to shippers' records. Often shippers will make their records available to Commission investigators on a voluntary basis when the information therein is not harmful to the shipper himself but may aid in Commission administrative or enforcement action. However, clearly, a shipper who may be engaged in rebating, concessionary or other practices prohibited by the Commerce Act, will not volunteer his records. These latter type records may be obtained only through the grand jury process, by a subpoena issued in a Commission investigation (49 U.S.C. 12(1)), or by court ordered discovery in a situation when sufficient information is available to the Commission to constitute a prima facie showing upon which to institute a civil forfeiture or injunctive case. Even in cases where shippers are not engaged in unlawful activity, company policy may prohibit voluntary disclosure for fear of business secrets ultimately becoming known to competitors.

In recent months, a primary concern to the Commission has been the operations of shippers' associations and shippers' agents. Section 402(c) of the Interstate Commerce Act exempts from regulations the operations of a group of shippers who consolidate and distribute freight for themselves and members, on a non-profit basis, in order to take advantage of carload rates.

Likewise, an entrepreneur who acts as a consolidator or distributor of freight for shippers within a confined terminal area is exempt from regulation. It has been our experience that in investigating these two groups to determine if the organization is a bona fide shippers' association or shippers' agent, difficulty arises in gaining access to the records for inspection. Additionally, shipper associations and shipper agents have been found to falsify the descriptions on bills of lading and understate the weight of shipments to obtain lower transportation charges than would legally be applicable. It is extremely difficult to investigate these cases when access to the records are denied the investigator by the shipper.

The Commission has submitted certain proposals to the Congress to correct deficiencies in the protection of Commission investigators. Specifically, it has been recommended that section 1114 of Chapter 51, Title 18, of the United States Code, which protects certain officers and employees of the United States in performing their official duties, be amended to include certain employees of the Interstate Commerce Commission. Tangentially, it should be noted that the Commission has minimal authority to obtain compliance from or to prevent the recurrence of violations by shippers. To correct this situation, it has been recommended that section 222(b) of the act be amended to apply that civil forfeiture provision to shippers. Additionally, the Commission is considering proposing corrective legislation to the comparable sections of Parts III and IV of the

Interstate Commerce Act. The Commission is also studying proposing corrective legislation to section 402(c) to exclude that specific exemption as it applies to shippers and to section 20(5) to include specifically shippers.

(6) Is it the Commission's policy that investigations of violations against bankrupt carriers have "little enforcement potential"? Are bankrupt carriers being prosecuted for violations? If not, why not? Do you plan to make changes to correct the situation?

The Commission's policy has been and is to enforce the Act irrespective of whether the carrier is financially viable or is in bankruptcy. No special exceptions will be made for bankrupt carriers. In this respect we would direct your attention to the Commission's action against the Rock Island in connection with the attempted abandonment by that carrier of a line in Nebraska without approval of the Commission. Again, the Commission has proceeded against carriers in bankruptcy or in poor financial condition where there have been violations of the credit regulations and similar regulations of the Commission. Further illustrative of this are criminal cases resulting in fines against bankrupt Penn Central (ER 8-68-406; $50,000; ER 4-68-407; $10,000), the Erie Lackawanna (ER 4-71-404, $10,000;), Central of New Jersey (ER 2-70-402, $3,000) and civil forfeitures imposed upon the Boston and Maine (ER 1-74-405; $13,400) and Erie-Lackawanna (ER 2-75-402; $15,000). It should be noted that several of these cases were commenced before the carrier's bankruptcy, and Commission counsel had to oppose motions to dismiss by the trustees in order to keep the cases before the Courts. Since bankrupt carriers are being prosecuted when the circumstances warrant, there will be no change in Commission policy. It should be noted, however,

that the advent of Conrail will reduce the number of bankrupt carriers subject to possible enforcement action.

7. Do you feel that the Bureaus of Enforcement and Operations are directing their resources appropriately? Should these Bureaus be concentrating more on pursuing large violations with large economic impact?

In view of the Commission's current in-depth analysis of this very subject, we believe it would be inappropriate to respond to this question at the present time. In fact, no Commission position has been taken or will be taken until we have had an opportunity to review, discuss and act upon the recommendations that Vice-Chairman Clapp will make later this month. (See our answer to Question 1.)

(8) The Subcommittee's June 1975 questionnaire asked you to list the Commission's 20 oldest proceedings. In the eight months which have passed since that questionnaire, how many of the proceedings have been concluded?

Of the 20 cases on your list 4 have been closed. One (which embraces 4 REA Express applications for operating authority) involves an applicant whose property is being liquidated by a bankruptcy court; and that proceeding, unless the applications are revitalized by a purchaser, will be closed in due course. Another, Ex Parte 251, involves the status of REA Express as an air express company, an issue which appears to have been finalized by court decision sustaining an adverse decision from the CAB; and a draft order by the ICC is pending before the CAB for its concurrence. Three are held open by court action.

In four of the remaining cases, draft final reports have been circulated to the Entire Commission or Division thereof. Seven are pending on petitions seeking reconsideration of an earlier report. The fact that these are the oldest proceedings is a reflection of their uniqueness, since the vast majority of proceedings are closed well within a year from date of institution. These, however, involve highly controversial and/or heavily contested issues.

Question 9:

What is the oldest proceeding?

The oldest Commission proceeding remains Ex Parte No. 251 entitled Joint Rate and Practices of Surface and Air Carriers. This case is now nine years old. This matter is being worked jointly with the Civil Aeronautics Board. A draft order has been submitted to the CAB for its concurrence.

(10) How many proceedings of any type--rail, truck, freight forwarder, pipeline, or water carrier (please specify type)--does the Commission have which are older than four years; three years; two years? (Under Section 303(b) of the Railroad Revitalization and Regulatory Reform Act of 1976, all these cases must be administratively concluded in three years.)

As of the conclusion of February 1976, the following represents the number of proceedings by category within the age brackets specified in this question:

	2-3 years	3-4 years	4 years & over
Ex Parte (Rulemaking)	8	4	5
Finance Docket & Abandonment	51	25	10
Freight Forwarder Application	3	0	1
Fourth Section Application	0	0	1
Investigation & Suspension (Rail)	4	1	0
Investigation & Suspension (Motor)	2	0	0
Motor Carrier Application	112	45	19
Motor Carrier Complaint	22	2	10
Motor Carrier Finance	28	8	9
Formal Docket (Complaint)	43	14	11
Section 5A (Rate Bureaus)	3	0	2
Water Carrier Application	2	2	0
Total	278	101	68

(11.) Estimate the cost to ICC of processing each of the 20 oldest proceedings.

The extraordinary complexity of the twenty oldest proceedings and the very fact of their unusual age renders a reasonably accurate evaluation of their respective costs to the agency virtually impossible. The Commission has, for fee scheduling computation purposes, developed processing costs for the average proceeding by major case type. However, these are certainly not average cases. To simply multiply the average cost times the factor by which these proceedings exceed the average disposition time would be a contrived response and have little relationship with the true expense. Alternatively, a distinct study could be instituted to individually examine the life cycle of each of these proceedings. However, our individual attorney monthly time accounting reports are retained only for the current and prior year. Therefore, for each of these cases over two years old, our staff would be obliged to estimate professional time. In sum, an accurate computation is unavailable. If requested, a study such as suggested in the second alternative will be instituted.

12. What is the average time for the Commission to decide each case once that case has been presented to it? In the last two years, how many cases has it taken longer than three months to decide?

A proceeding is considered "submitted" for decision when all the pleadings are received, and the case is ripe for a decision. After the matter is "submitted", the staff attorney must write a report (including analysis of facts and legal research) or draft an appropriate order and explanatory memorandum. Thus, the times reflected below include the activity of initial preparation and staff review of proposed decisions as well as the time involved in the Commission's deliberations.

The average time taken during fiscal 1975 for the Commission to render a decision once the proceeding stands submitted is depicted below. Since considerable differences exist in the average timeframes according to complexity of the proceedings, these figures are broken down by decisional body. This breakdown corresponds roughly to the magnitude of the proceeding.

	Number of Proceedings	Elapsed Time (months)
Commission or Division Report or Order	289	9.1
Commission or Division Decision & Order	208	9.1
Employee Boards 1 through 5	2,658	5.8
Finance Board & Operating Rights Board	2,194	0.6

The above statistics were derived from standard output reports run annually on the Commission's Central Case Status System. This system has not yet been converted into an interactive computer system and thus cannot respond to ad hoc inquiries. Consequently, to respond to the second part of this question, which requests the actual number of cases which took longer than three months over the past two years, would require an extended manual review of hard copy records. This research will be instituted if requested. An estimated two man-weeks would be required to review and tally the roughly 11,000 dispositions within these categories for the past two years.

13. What is the average time for the Commission to approve the report of its decision? In the last two years, how many decisions have taken longer than three months to approve?

The time required by Commission decisional bodies to review, comment upon, and approve draft reports is minimal. This naturally varies somewhat according to the complexity of given proceedings. The figures below represent a three year average on selected major categories of proceedings.

	Average time (months)	Sample Size
Motor Carrier Applications	0.0*	13,712
Motor Carrier Complaints	0.4	96
Motor Carrier Finance	1.0	833
Rail Finance	1.1	976

To determine the actual number of cases which required greater than three months to review and approve would require an extended manual effort as cited in number 12 above; but can be accomplished if requested. The statistics, however, indicate that this number would be rather small.

*Computer programs are structured to account for timeframes as short as one tenth of a month. The average time for approving a decision is less than one-tenth of a month, estimated by the staff to be between two and three days.

14. What effect does the number (11) commissioners have on the Commission's ability to reach a collegial decision? If the Commission were smaller (e.g., five), could it act faster?

In the Commission's experience, the membership of 11 has not had any significant impact upon its ability to reach a collegial decision. Due to the division of work into 3 categories--Rates, Finance, and Operating Rights--with 3 members on each division, decisionmaking on routine matters is done by collegial groups of three. This structure allows matters of policy or general transportation importance to be reserved to the entire Commission. While a reduction in the number of Commissioners has been proposed, the Commission, as a whole, does not believe such a reduction would, in and of itself, expedite Commission action.

Vice Chairman Clapp is of the opinion that a body of 11 Commissioners is unwieldy and that the size should be reduced. Commissioner O'Neal states that it would be desirable to reduce the number of Commissioners because the effect of having eleven Commissioners participate in a collegial decision tends to excessively dilute each Commissioner's responsibility for the decision.

Q. 15. Unnecessary delay imposes a great burden on small businesses attempting to gain authorities or extensions of authority. Enclosed (Attachment B) you will find a case concerning a common carrier application for a James Blake Chisolm. You will note that the final decision in this case took some 32 months since the date of filing. What possible reason could there be for this lengthy delay? Is this amount of delay untypically long for a small businessman to wait for a final decision on an application of this type?

By application filed November 20, 1972, James B. Chisolm, an individual of Savannah, Ga., sought a common carrier certificate to transport, in interstate or foreign commerce, passengers and their baggage, in charter operations, beginning and ending at Savannah, and extending to points in Georgia, Florida, South Carolina, and North Carolina. The case is now administratively final. By decision and order of February 9, 1976, the Commission's Division 1 granted applicant a 3-year term certificate (which may be permanently extended upon appropriate petition therefor by applicant in the third year of its term) to conduct the sought operations, except those to points in Georgia, which were found to be intrastate in nature and, therefore, not within the jurisdiction of this Commission.

For nearly the entire period of its processing, this case has been the subject of extensive press coverage in local (Georgia) and national newspapers, numerous private

and congressional inquiries, and procedural delay (most of which was attributable to the applicant). Our response to your question consists primarily of an explanation of the regrettable delays.

The application filed by Mr. Chisolm on November 20, 1972, was patently inadequate: both "commodity" and "territorial" descriptions were incomplete, and certain information concerning the passenger certification was omitted. By letter of December 5, 1972, the Commission informed applicant of the deficiencies and requested the necessary information. Our records show that the information was not delivered until June 26, 1973. The application was then duly published in the Federal Register on July 12, 1973, nearly 8 months after the initial filing.

At this point, it may be helpful to describe the then-current Commission time schedule for processing applications for motor carrier operating rights:

(1) The application (using Form OP-OR-9) and supporting shippers' certification are filed.

(2) Twenty days hence, the application is published in the Thursday issue of the Federal Register.

(3) Thirty days hence, the due date expires for the filing of initial protests to the application.

(4) Fifteen days hence, the Commission serves an order on all parties of record designating the case for processing under the modified procedure (a method to process those cases not involving oral hearing, but written verified statements more particularly described below).

(5) Thirty days hence, the due date (specified in the modified procedure order above) expires for the submission of applicant's and supporting shippers' verified statements to the Commission and protestants.

(6) Thirty days hence, the due date expires for the submission of protestants' verified statements to the Commission, applicant, and other protestants.

(7) Twenty days hence, the due date expires for the submission of applicant's rebuttal statement to the Commission and protestants.

(8) Fifteen days hence, the case is submitted to a Commission review board for processing and an attorney advisor is assigned to draft an initial decision.

Assuming the optimum situation, in which no time extensions are sought, no amendments to the application are tendered, and no extra pleadings (such as motions to strike, intervening petitions, etc.) are filed, the above-described steps will consume 160 days. Depending upon the case

backlog of the attorney advisor to whom the case is assigned, a decision should be reached within several months.

Unfortunately, in the Chisolm case, nearly 8 months (or about 240 days) elapsed between the filing of the application and its publication in the Federal Register. The Commission's order designating this case for handling under the modified procedure, fixed October 24, November 23, and December 13, 1973, as the respective due dates for the submission of applicant's and protestants' verified statements. Following two time extensions at applicant's request and one at a protestant's request, all of the above-described statements were finally received by January 23, 1974. In the interim, between December 7, 1973, and January 9, 1974, the Commission had disposed of a petition by another carrier for leave to intervene in this case. On January 25, 1974, the case was submitted to a review board for processing.

On January 28, 1975, slightly over a year later, the review board made its decision in this case. Our records show that during the year, on May 6, 1974, applicant filed a motion requesting oral hearing, to which a protestant replied on May 19. Such pleadings generally signal ensuing procedural skirmishes by the contending parties, during which time the Commission obviously cannot make a decision based on the merits of the case. These pleadings were immediately referred to the

review board for handling in its report, and undoubtedly led to some delay in the further processing of this case.

On August 16, 1974, owing to the sudden illness of the staff attorney assigned to this case, the proceeding was reassigned to another staff attorney. This unforeseen circumstance undoubtedly caused several months delay in the processing of this case. Nevertheless, because of the age of this case (measured from its aborted filing date), it received priority treatment thereafter in accordance with standard Commission practice. Measured from the date of submissio to the review board, the length of time needed to reach a decision in this case was not uncommon, especially during that period when this Commission labored under extreme shortages of staff and resources. Finally, it should be noted that during this period, the processing of the case was regrettably deferred by the necessity to reply to numerous private and congressional inquiries concerning its status.

On April 24, 1975, upon consideration of petitions for reconsideration filed by protestants, and the reply thereto by applicant, the Commission's Appellate Division 1 reopened this proceeding for oral hearing de novo, held in June 1975. In less than 8 months, this case became administratively final. The time was allotted to an oral hearing, the filing of post-hearing briefs by the parties, an initial decision by

an Administrative Law Judge, the filing of exceptions to the initial decision, and a decision and order by the Commission's Division 1 finally granting to applicant authority to conduct the proposed operation. All during this period, the Commission handled numerous pleadings and answered numerous inquiries about this case, all of which potentially affected its processing in an expeditious manner.

In summary, the procedural history of the Chisolm case is atypical of those normally processed by the Commission. Much of the delay in the processing of this case, from filing to final decision, resulted mainly from applicant's lack of familiarity with Commission procedures, from the need to handle numerous pleadings filed by the various parties throughout the proceeding, and from the need to answer numerous inquiries principally instigated by applicant and his supporters.

As set forth in Appendix B of the ICC 89th Annual Report To Congress: 1975, the Commission processed 4,151 motor carrier operating authority cases in Fiscal Year 1975, under the modified procedure. Each such case, from date of filing to closing, was disposed of in an average of 10.6 months! This is the typical processing time, unlike the Chisolm case.

Also, in typical situations, an applicant for permanent motor carrier authority will usually be conducting the proposed operation under temporary authority, so that the public need is met while the permanent application is being considered. In the Chisolm case, temporary authority was denied for lack of proof that there existed an immediate and urgent need for the service proposed, and because the Bureau of Motor Carrier Safety of the Federal Highway Administration (Department of Transportation) reported that applicant was not in satisfactory compliance with the Administration's Motor Carrier Safety Regulations.

Finally, in Ex Parte No. MC-55 (Sub-No. 14), the Commission proposes in a rulemaking proceeding to explore (1) requiring applicants for operating rights authority to submit their case-in-chief at the time of filing their application, (2) that evidence submitted follow a standardized verified statement format, and (3) the institution of a policy of granting extensions in only the most limited circumstances. It is contemplated that the proposed rules, if implemented, would assist in further expediting modified procedure cases.

16. What is the extent of the involvement and participation of the White House, the Office of Management and Budget, the Council on Wage and Price Stability, and other Executive councils in Commission proceedings?

In the vast majority of Commission work as a quasi-legislative and quasi-judicial agency, there is no direct input from either the White House or Executive councils. While expressions of interest on behalf of various individuals or groups may be sent by the White House to the Commission for reply, communications of this type are handled in the normal course of Commission activity.

Occasionally, policy decisions made by the White House do have a significant input on Commission decisions. As an example, the President's executive order of August 15, 1971, entitled "Providing For Stabilization of Prices, Rents, Wages, and Salaries", and Executive Order 11627, dated October 15, 1971, providing the continuation of the stabilization of prices, rents, wages and salaries, had a significant impact on Commission decisions for the period of their effectiveness. Similarly, the regulations of the Cost of Living Council and the Price Commission implementing the Economic Stabilization Act of 1970, as amended, had a significant effect on Commission decisions.

Ex Parte No. 280, Special Procedures For Tariff Filings Under The Wage and Price Stabilization Program, served July 18, 1972, may be taken as a prime example of Commission activity directly related to the above-noted executive and executive council orders and regulations.

Later Executive Orders having a similar effect on Commission decision making include E.O. 11695 dated January 11, 1973, which provided for the establishment of Phase III of the Economic Stabilization Program; E.O. 11723, dated June 13, 1973, which continued and expanded the Phase III programs; and the Phase IV announcement of the President and the Cost of Living Council dated July 19, 1973.

Beyond this direct Executive and Executive Council influence on Commission proceedings, the White House and the Office of Management and Budget have an indirect influence on Commission proceedings through the "power of the purse". Budgetary and manpower constraints placed upon the Commission by the executive branch have a significant input to the Commission in regard to resource allocation, which in turn affects options in caseload management and procedural and technological innovations.

17. Central to the concept of abandonment is the interpretation of the phrase "public convenience and necessity". In testimony before the House Commerce Subcommittee on Transportation and Commerce, in February of this year, Commissioner MacFarland, when asked which of the two criteria -- economics or public convenience and necessity -- should come first in deciding abandonment cases, stated that economic considerations should come first. Do you share this view?

Several points regarding the testimony of Commissioner MacFarland on February 4, 1976, must be clarified.

Commissioner MacFarland's statement specifically was qualified as being solely his individual opinion and not that of the Commission (See pp. 2-17, 2-18, and 2-20 of the hearing transcript). It was directed only to the specific issue of passenger train discontinuance, not rail freight abandonment as indicated in the question. Commissioner MacFarland remains of the belief that the economic element of a proposed discontinuance is of primary importance in reaching a public convenience and necessity decision. He notes, however, that his belief can best be characterized as moot, since under the present Amtrak statutes, the Commission is not expected to face questions of Amtrak passenger train discontinuance in the foreseeable future.

The Commission's position is and has been that the public convenience and necessity issue is the ultimate consideration in abandonment and that economic impact is but one aspect, albeit significant, of that statutory determination.

Question 18

What specific criteria did the Commission apply in the past in abandonment decisions?

Answer

The criteria considered by the Commission in the resolution of proposed abandonments included such items as:

(a) Past use of the rail service and alternative transportation.

(b) Anticipated use of the rail service in the foreseeable future

(c) Substitutability of other transport means.

(d) Availability of other transport means and other rail service

(e) Effect that loss of the rail service would have on the communities and individuals served.
Direct and indirect job loss.
Other socio-economic effects.
Effect upon ability of shippers to reach markets and sources of supply
Effect upon profitability of the shippers

(f) Environmental impacts.

(g)* Financial results of the rail operation over the subject line segment during the current year and previous two calendar years.

(h)* Financial results to the railroad if the operation must be continued.

(i)* Financial results to the railroad if the abandonment takes place

*Net avoidable cost is the standard. It is computed by comparing:

Costs which would not be incurred if the operation were not conducted.

Revenues which would be lost if the operation were not conducted.

Costs which would be incurred in re-routing retained overhead traffic.

Revenues which would be retained by re-routing overhead traffic.

(18) Cont'd.

(j) Overall financial condition of the railroad.

(k) Ability of the railroad to absorb a deficit from the line and to subsidize the line from revenues obtained from other traffic.

(l) Need of the right-of-way for a higher public purpose, e.g., superhighway, dam or flood control project, urban renewal project.

(m) Feasability of relocating the line.

19. What are the differences between ICC and railroad cost allocation to branch lines and why do these differences exist?

Historically, the ICC has not, as a matter of practice, allocated costs to branch lines. The present Uniform System of Accounts for railroads does not require them to maintain and report operating expenses by individual branch lines. Under present abandonment procedures, the railroad applying for abandonment of a branch line is required to furnish the avoidable loss sustained by the branch line operations. The avoidable loss is determined by deducting the revenues which would no longer be retained if the branch line were abandoned from the avoidable expenses which would no longer be borne by the railroad if the line were abandoned. Where differences have existed between a railroad's presentation and the Commission, it has not been a matter of simply allocating expenses to the branch line, but rather identification and accumulation of those expenses which the railroad would be able to eliminate in determining the avoidable expenses. This can be accomplished by a combination of methods. Expenses incurred in the operation of the branch line must be determined on the basis of actual expenses for labor and materials incurred over the branch line for preceding years. In connection with maintenance of way expenses it must be demonstrated that they would actually be saved upon the abandonment of the line. Other avoidable

expenses may be determined by the application of unit costs to the service units actually generated on the line. An example of these might be fuel consumed per hour or per mile applied to the actual miles or hours of the locomotive servicing the branch line.

The railroads have not always been consistent among themselves in measuring the avoidable expenses. In some cases the railroads accumulate expenses from records of expenditures, positions to be eliminated, with allocations being confined to those items which can be saved but measured only in terms of service - unit output. These usually present little or no problem. In other cases the railroads have determined the avoidable expenses by apportioning blocks of expenses to the branch line on the basis of convenient allocation factors such as particular service units. They may do this without regard to whether or not all of the elements of expense would actually be saved. For example, the railroad may develop a system average cost per track-mile for maintenance of way and structures. This would then be applied to the number of track-miles of the line to be abandoned to determine the maintenance of way expense to be saved. They may do this despite the fact that no maintenance has been performed on the line for years or that the level of maintenance required for the branch line may be substantially less than that required elsewhere on the system. In addition, the railroad may have included overhead expenses which would not be eliminated if the line were abandoned. The railroad may also include a portion of expenses which are joint with other

traffic and which would continue even if the branch line were abandoned. In still other instances the railroads may claim expenses as avoidable with no explanation or justification demonstrating that the expenses will, in fact, be saved.

The Commission's function has been to evaluate the reasonableness of the methods used by the railroad to determine the various avoidable expenses and to insure that the railroad has adequately demonstrated that the expenses will be actually saved. Under the present system, the Commission does not compute costs for branch line abandonment proceedings but relies exclusively on justification introduced by the applicant.

Question 20

Does I. C. C. force railroads to operate lines which are money losers for the railroads? If so, why?

Answer

Railroads have a legal obligation to provide service over their lines, which they normally can be relieved of only if an abandonment application is approved by the Commission. In abandonment proceedings, the Commission must weigh the burden of continued operation on the railroad against the public need for rail service, and if the Commission finds that a proposed abandonment would not be consistent with the public convenience and necessity it is required by the Interstate Commerce Act to deny the abandonment application, in which case the railroad must continue operating the line even if it is unprofitable. Usually, abandonments are denied in proceedings where either the railroad has failed to meet its burden of demonstrating that it will be significantly injured by continued operation of the rail line, or where the Commission has found that public need for continued operation outweighs any likely injury to the railroad. In this context it should be noted that many major mainlines in the Northeastern portion of the Nation have probably been unprofitable in the last few years, yet their abandonment would have an enormous adverse impact on the economies of the areas which they serve. Applications to abandon any such lines would have to be very carefully considered by the Commission, and it is quite likely that they would be denied.

Question 21

What problems prevent faster resolution of abandonment procedures?

Answer

Abandonment proceedings are delayed primarily as a result of the requirements of the National Environmental Policy Act of 1969, and by the requirements of administrative due process. In addition, the Commission's work load of cases may contribute somewhat to delay in handling such proceedings. Under the requirements of the National Environmental Policy Act, the Commission must, before it considers an abandonment application on its merits, prepare either a threshold assessment survey or an environmental impact statement, assessing the likelihood that the proposed abandonment will affect the quality of the human environment. The interested public is given an opportunity to comment on these proceedings, and between two and eight months can be required to complete this procedure.

Apart from environmental effects, notice of the application must be published in local newspapers for three consecutive weeks, and interested persons must be given an opportunity to protest. If contested, the application is set for a hearing. Any party who disagrees with the initial decision may appeal it to a division of commissioners, and opposing parties may respond. If the division modifies or reverses the initial decision, its decision is subject to a petition for reconsideration, and, finally, a final decision by

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a division may be appealed to the full Commission if the case involves an issue of "General Transportation Importance." Each step in this process takes time. The parties need time to prepare and make their presentations; and the Commission needs time for its deliberations.

Question 22: What is the ICC doing to expedite abandonment procedures?

Pursuant to the provisions set forth in section 802 of the Railroad Revitalization and Regulatory Reform Act of 1976, enacted February 5, 1976, the Commission is promulgating regulations in conformity with the specific provisions of the law. Included in the proposed regulations are certain procedural changes which will provide greater efficiency and expediency in the disposition of abandonment proceedings. These procedures are as follows:

(1) The proposed regulations require each rail carrier to submit to the Commission, within 180 days of the promulgation of the rules, a diagram of its entire system, designating each line of railroad which the carrier deems as potentially subject to abandonment. The intent of this provision is to effectuate a procedure which adequately alerts the Commission and interested persons to the future abandonment plans of carriers by railroad.

This required submission is most important inasmuch as the Commission, by statute, cannot issue a certificate of abandonment if the application is opposed by a significant shipper, or a State unless the line of railroad has been identified and described in the diagram which was submitted to the Commission at least 4 months prior to the date the application was filed.

(2) In order to expedite the notice and application procedures, the proposed regulations require that the filing of abandonment applications shall be preceded by adequate notice. This provision enables all public

notice requirements to be fulfilled by the carrier prior to the submission of the application to the Commission. This will expedite the actual processing of the application after it is once filed. This procedure will also give the Commission an earlier indication as to opposition.

Once the application is filed with the Commission, a determination, pursuant to statutory obligation, will be made within 55 days whether an investigation should be ordered and hearings conducted. The determination will be made on the basis of protests, petitions, and comments received which contain information that warrant an investigation. If no investigation is ordered, the Commission will issue a certificate to abandon 60 days from the date the application is filed.

However, if an investigation is ordered, the Commission is required to complete all evidentiary proceedings, either modified procedure (written submissions) or oral hearing, within 180 days. Within 120 days after the completion of all evidentiary proceedings, an order, report, or initial decision will be served. Any party may file an appeal within 20 days after such service. Within 180 days, after the date on which such appeal is filed, the appeal must have been completed and acted upon by the Commission.

In order that the expeditious procedures will be strictly adhered to, when implemented, the Commission is presently allocating sufficient manpower to operate effectively under these procedures.

Question 23: Can abandonment cases be considered in groups instead of individually? If so, should ICC encourage such action?

As a general rule, the Commission has not dealt with abandonment applications in groups. In applying the statutory test of public convenience and necessity for abandonments it focuses on the individual facts and circumstances of each individual abandonment application. The threshold test, as enunciated by the Supreme Court in Brooks-Scanlon Co. v. Railroad Commission of Louisiana, 251 U.S. 396, 399 (1920), is the profitability of the line, a test which solely involves the revenue data for that particular line. However, the Commission may refuse to grant the abandonment of an unprofitable line where there exists countervailing public interest considerations. All such considerations depend upon an examination of the specific facts and circumstances surrounding the line proposed for abandonment such as available alternative transportation facilities, the impact on shippers and communities located on the line, and the environmental impact. Such individual factors generally cannot be adequately considered where a group of abandonments are handled on an consolidated basis.

However, in certain circumstances, the Commission will require the consolidation of abandonment applications. This is primarily where such applications are interrelated, as where they involve the same line, segments of the same line operated as a unit, or where the same carrier is involved. Consolidation of proceedings will also be used where one carrier seeks to discontinue service over a particular line while at the same time another carrier seeks to institute service over the same line. These consolidations are reasonable because many of the same interests will be represented and many of the same arguments will be presented in the related proceedings.

(23) Cont'd

It may be possible, now that the railroads must file an entire system diagram, for a number of line segments to be designated for abandonment as part of a regional railroad restructure and rehabilitation plan, with certain segments being retained and upgraded while redundant and atrophied segments are phased out. This could include joint use of line and terminal facilities by more than one railroad, consolidation of shipper industries along improved rail facilities where better, cheaper service might be obtained, and participation by shippers and governments (state and local) in the restructure program and in the subsidization of future rail service.

Question 24:

As a result of the subsidies provided under the Railroad Revitalization Act, will the ICC relax its abandonment requirements?

The Rail Revitalization and Regulatory Reform Act does not alter the legal standard for the abandonment or discontinuance of service of a line. We shall continue to require a showing of public convenience and necessity, as required by Congress in the Interstate Commerce Act. This standard, since its inclusion in the statute, has become well defined through both Commission and court decisions. Where there is great need for a particular deficit service, but no capacity in the carrier to sustain the service, the availability of public funds could well affect the posture of the parties and, in turn, the Commission's approach to a decision. Nevertheless, it would be speculative on our part to attempt a forecast in the abstract as to how the parties and the Commission will react to particular situations under the new law.

If the Commission does make a finding that a submitted offer of financial assistance is likely to cover either the difference between the revenues which are attributable to such line and the avoidable cost of providing rail freight service on such line together with a reasonable return on the value of such line or the acquisition cost of all or any portion of such line, the Commission will postpone the issuance of a certification of abandonment or discontinuance for such reasonable time, not to exceed 6 months, to enable the offeror and the carrier to enter into a binding agreement for continued service with the offeror's assistance. Upon notification to the Commission of the execution of an agreement, the Commission will postpone the issuance of the certificate of abandonment or discontinuance for such

period of time as the agreement (including extensions or modifications) is in effect.

In addition, the Commission, during the period that the issuance of the certificate is postponed, will retain jurisdiction to reopen the proceeding and reconsider its merits in the event of any change of circumstance. Such circumstances would include, but not be limited to, a railroad's rejection of a reasonable offer of subsidy assistance or acquisition payment and a situation where the operation of a line, pursuant to an offer of assistance, becomes profitable.

Question 25:

Is it appropriate to subsidize lines ICC approves for abandonment, or should subsidy be directed to marginal lines which are not abandoned?

The question posed does not permit a ready answer since the assumptions apparently underlying the question may not be completely valid. The question assumes that a simple distinction may be made between those "marginal lines" required by the Commission to continue operation and those lines, presumably lines with heavy losses, permitted to abandon operations. Such a clear-cut distinction cannot be made. As has been pointed out, in determining whether public convenience and necessity permit an abandonment, the Commission traditionally has balanced the present and future burden upon the petitioning railroad and upon interstate commerce of continued operation of the line against the present and prospective need for the line by shippers and communities in the area served. The end result of weighing these several factors may be a determination that a "marginal line" should be abandoned. In fact, the Commission has permitted abandonment of marginally profitable lines, particularly where continued operation would have required extensive rehabilitation expense. See, e.g., Chesapeake & O. Ry. Co. Abandonment, 331 I.C.C. 889, affirmed sub nom. Asbury v. U.S., 298 F. Supp. 589, and East Carolina Ry. Abandonment, 324 I.C.C. 506. As stated in the latter case at 514:

> "In order to determine whether the public convenience and necessity permit the proposed abandonment it is necessary that we weigh such marginal profits from combined operations against the needs and burdens of rehabilitation and the needs of the public for the continued operation of the line now and in the future. The point at which abandonment shall be considered justifiable is a matter of sound judgment, and must be determined by the circumstances of each case. Chicago, M., St. P. & P. R. Co. Abandonment, 184 I.C.C. 687."

One of the "circumstances" of the case which will be considered in future applications for abandonment of marginal lines is the offer of a subsidy for continued operation.

The present statute authorizes subsidy only for lines as to which a certificate of abandonment or service discontinuance has been issued. We see no present reason to recommend a change in the statute.

Question 26:

"What can ICC do to reduce 'de facto' abandonments?

A "de facto" abandonment may result from several factors, including (1) the absence of any need for service on a line; (2) a termination of service due to the physical deterioration of, or damage to, a line, which may involve violations of the safety regulations of the Federal Railroad Administration; and (3) the gradual reduction of service by a railroad which is reluctant to continue offering an unprofitable service. There appears to be no public need for ICC action in connection with (1) above. In the case of (2) above, a railroad terminating service for these causes must file an embargo. This can be challenged, but the basis for such challenge comes, in most instances, from affected shippers. Similarly, the affected shippers must alert the Commission if service is being purposely reduced in the situation described in (3). Under the recent Rail Act, any transportation regulatory body of a State or area, among others, has the power to challenge an unauthorized abandonment. In addition, the Bureau of Enforcement has contested embargoes of questionable merit. The statutory tools to handle this problem are available. However, shippers may be alerted, through publicity, to the available remedies, so they do not "sleep on their rights." Further, the Commission staff can be encouraged to act as promptly as possible in this area by stressing the importance of these complaints.

27. How many railroad bankruptcies have there been since 1972?

Since 1972 the following Class I railroads have filed for reorganization under Chapter 77 of the Bankruptcy Act.

1. Ann Arbor 10-15-73
2. Chicago, Rock Island & Pacific 3-17-75

Question 28.

Why hasn't this information been relayed to the Congress to assist in its transportation planning efforts?

When we began preparing these "Early Warning" reports in 1972 we used a method of rating the railroads which proved to be overly sensitive. The method was adequate for in-house purposes since we were alerted to even the slightest downturn in financial strength but since a subsequent in-depth analysis often showed the carrier was financially fit, we deemed it misleading to submit these quarterly reports to the Congress. Of course, if the in-depth analysis revealed financial trouble we did advise the Congress such as we did in REA Express.

Moreover, we have in the past released certain information on this subject to the Congress. For example, reports showing the current status of the cash position of the Chicago, Rock Island and Pacific Railroad Company and the Penn Central Transportation Company are submitted weekly to the House Committee on Interstate and Foreign Commerce and the Senate Commerce Committee.

An in-depth review of ConRail's prospective viability was attached to Chairman Stafford's testimony before the Subcommittee on Surface Transportation of the Senate Committee on Commerce on September 18, 1975 and to the Subcommittee on Transportation and Commerce of the House Committee on Interstate and Foreign Commerce on September 23, 1975. Also, the Commission has submitted to the Senate Committee on Commerce periodic

financial analyses on REA Express, the last one dated June 3, 1975, which clearly noted underlying causes, necessary action, and prospects for future viability.

Question 29.

Why hasn't the Commission warned the public of these impending financial difficulties?

As previously indicated by our response to question number 28, in the beginning we were reluctant to submit our Early Warning reports outside of the Commission, because of fear that misleading inferences would be drawn. The report of a quarterly decline in the financial condition of a carrier does not always mean that it is a candidate for bankruptcy. Submission to the public could adversely affect the carrier's credit. For example, such adverse publicity could result in higher interest rates on carrier loans or inability to get financing and unnecessary loss of shipper confidence that could result in some traffic diversion.

30. If the system is capable of "pinpointing railroad danger spots" has the Commission taken steps to warn the companies and assist in correcting these danger spots?

It is the regular practice of our financial analysts and auditors to discuss financial problems with top carrier management. As needed, various Commissioners have also participated in these discussions. Possible areas of relief have been explored such as mergers, restructuring of operations and new financing.

While it is not the Commission's purpose to manage the carriers, it frequently exercises its power to condition orders granting authority, for example, to merge or to issue securities. A typical condition prevents the payment of dividends without prior Commission approval. Other conditions restrict transactions between the carrier and its parent holding company.

The financial oversight information also alerts the Commission as to which railroads are in danger of ceasing operations, so that advance planning for Section 1(16)b takeover can be undertaken. Under Section 1(16)b the Commission can direct another railroad to operate over the defunct railroad's lines. In order to plan effectively, the Commission must know the latest financial and economic conditions of those railroads connecting with a potential defunct railroad, so that it can determine which carriers are financially able to assume Section 1(16) b directed operations. The availability and the capability of carriers to perform under Section 1(16)b were supplied to the Commission through the Early Warning System in both the Rock Island and Penn Central situations.

31. What kind of information is collected from this system?

The Commission's overview program, in addition to evaluating financial trends, closely monitors the economic and maintenance aspects of a carrier, since these factors are all interdependent. Besides reviewing normal ratio trends, the overview program places heavy emphasis on the physical replacement levels of railroad properties in order to evaluate maintenance adequacy and earnings quality.

A carrier is able to report higher earnings by undermaintaining or deferring maintenance. Consequently, any overstatement in net income would likewise distort any financial indices predicated on net income. Evaluation of maintenance levels leads to a better understanding of a carrier's true earning power or capacity.

In addition, the overview program places heavy emphasis on existing and prospective economic factors. The system closely monitors such factors as commodities carried, employment trends, commodity mix, competition, rate levels, service capacity, and aggregate national trends, to name a few, which directly affect traffic levels. The ability to increase or retain traffic, and concomitantly, revenues, goes a long way in determining financial viability.

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32. Have all individuals with access to this Early Warning System data submitted personal financial assessment statements?

The Early Warning System of the Bureau of Accounts is administered by the Early Warning Branch of the Section of Financial Analysis. The Chief of the Section of Financial Analysis and the Chief of the Early Warning Branch, as prescribed by the ICC Canons of Conduct, file a Confidential Statement of Employment and Financial Interest (ICC Form 1164). A sample copy of this form is enclosed.

While a financial statement has not been required of other analysts all personnel in the Early Warning Branch have been told that they must abide by the Commission's Canons of Conduct for Members and Employees. Each employee has received a copy of the Canons, at the inception of his employment and subsequently when revisions or updates have been issued. A copy of the Canons of Conduct is enclosed. If you feel that a Form 1164 should be filed by every analyst we will so require.

Enclosures (2)

CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS
(FOR USE BY GOVERNMENT EMPLOYEES)

1. NAME *(last, first, initial)*	2. TITLE OF POSITION
3. DATE OF APPOINTMENT IN PRESENT POSITION	**4. AGENCY AND MAJOR ORGANIZATIONAL SEGMENT**

PART I. EMPLOYMENT AND FINANCIAL INTERESTS. List the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational, or other institutions: (a) with which you are connected as an employee, officer, owner, director, member, trustee, partner, adviser, or consultant; or (b) in which you have any continuing financial interests, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association; or (c) in which you have any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts. If none, write NONE.

NAME & KIND OF ORGANIZATION (USE PART I DESIGNATIONS WHERE APPLICABLE.)	ADDRESS	POSITION IN ORGANIZATION. (USE PART I(a) DESIGNATIONS, IF APPLICABLE.)	NATURE OF FINANCIAL INTEREST, e.g., STOCK, PRIOR BUSINESS INCOME. (USE PART I(b) & (c) DESIGNATIONS, IF APPLICABLE.)

PART II. CREDITORS. List the names of your creditors other than those to whom you may be indebted by reason of a mortgage on property which you occupy as a personal residence or to whom you may be indebted for current and ordinary household and living expenses such as household furnishings, automobile, education, vacation, and similar expenses. If none, write NONE.

NAME AND ADDRESS OF CREDITOR	CHARACTER OF INDEBTEDNESS, e.g., PERSONAL LOAN, NOTE, SECURITY

PART III. INTERESTS IN REAL PROPERTY. List your interest in real property or rights in lands, other than property which you occupy as a personal residence. If none, write NONE.

NATURE OF INTEREST, e.g., OWNERSHIP, MORTGAGE, LIEN, INVESTMENT TRUST	TYPE OF PROPERTY, e.g., RESIDENCE, HOTEL, APARTMENT, FARM, UNDEVELOPED LAND	ADDRESS. (IF RURAL, GIVE RFD. OR COUNTY AND STATE.)

PART IV. INFORMATION REQUESTED OF OTHER PERSONS. If any information is to be supplied by other persons, e.g., trustee, attorney, accountant, relative, please indicate the name and address of such persons, the date upon which you requested that the information be supplied, and the nature of subject matter involved. If none, write NONE.

NAME AND ADDRESS	DATE OF REQUEST	NATURE OF SUBJECT MATTER

PART V. If any of the firms, etc., reported in Parts I, II, III, and IV above, own any interest in any mode of transportation than private forms thereof, list their names and the names of the transportation companies in which they own any interest. If none, write NONE.

NAME OF ORGANIZATION	NAME OF TRANSPORTATION CONCERN

I certify that the statements I have made are true, complete, and correct to the best of my knowledge and belief.

(Date) _____ *(Signature)* _____

ICC-1164
(5/74)

GENERAL REQUIREMENTS

1. This form is for use by employees specified in Section 1000.735-16 and Appendix I of the ICC Canons of Conduct for members and employees of the Interstate Commerce Commission. (49 C.F.R. 1000.735)

(a) Employees shall submit statements to the Director of Personnel within 90 days from the effective date of the Commission's Canons of Conduct, or if appointed after the effective date, within 30 days after entrance on duty. Pursuant to the grievance procedures enumerated in ICC Manual - Administration, page 22-725, employees so specified may file and have reviewed a complaint that his position has been improperly designated as one requiring the submission of a statement of employment and financial interests.

(b) Any changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. Where no changes or additions occur, a negative report is required.

(c) The financial statements required herein are in addition to, and not in substitution for or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of financial statements by employees does not permit them or any other person to participate in matters in which participation is prohibited by law, order, or regulation. Notwithstanding the filing of such statements, employees shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interests provisions of 18 U.S.C. 208.

2. The information to be furnished in this Confidential Statement of Employment and Financial Interests is required by Executive Order 11222 and the regulations of the Civil Service Commission issued thereunder and may not be disclosed except as provided in Section 1000.735-27 of the ICC Canons of Conduct.

3. The interests, if any, of a spouse, minor child, or any blood relation who is a member of, and resident in an employee's immediate household shall be reported as his interest. If that information is to be supplied by others, it should be so indicated in Part IV on this form.

4. In the event any of the required information, including holdings placed in trust, is not known to the employee, but is known to another person, he should request that other person to submit the information on his behalf and should report such request in Part IV on this form.

5. The information to be listed does not require a showing of the amount of financial interest, indebtedness, or the value of real property.

6. The employee is not required to submit any information relating to his connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or any similar organization not conducted as a business enterprise and which is not engaged in the ownership or conduct of a business enterprise. Educational or other institutions doing research and development or related work involving grants of money from contracts with the Government are deemed "business enterprises" for purposes of this report and should be included.

Interstate Commerce Commission
Washington, D.C. 20423

CORRECTION

CANONS OF CONDUCT

Section 1000.735-12 Prohibited financial interests.

Members and employees shall not be employed by or hold any official relation to, or own any securities of, or be in any manner pecuniarily interested in carriers to the extent prohibited by the Interstate Commerce Act. This Canon prohibits (1) any direct interest in any for-hire transportation company whether or not subject to the Interstate Commerce Act and (2) any interest in any company, mutual fund, conglomerate, or other enterprise which in turn has an interest of more than ten percent of its assets invested in or derives more than ten percent of its income from any for-hire transportation company whether or not subject to the Interstate Commerce Act. (The Commission, notation vote, October 2, 1973.) (39 FR 8326, March 5, 1974.)

Canons Of Conduct For Members And Employees

Title 49—TRANSPORTATION

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Ex Parte No. 37]

PART 1000—THE COMMISSION

Canons of Conduct

Order. At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 21st day of February 1968.

Upon consideration of the Civil Service Commission's amendments to its regulations governing "Employee Responsibility and Conduct" in 5 CFR Part 735, certain provisions of this Commission's Canons of Conduct issued December 21, 1965, and contained in Subpart B of Part 1000 of Chapter X of Title 49 of the Code of Federal Regulations, require revision. These amendments are contained in the republication of Subpart B set forth below.

These amendments were approved by the Civil Service Commission on August 30, 1967, and are effective upon publication in the FEDERAL REGISTER.

It is ordered, That Subpart B of Part 1000 of Chapter X of Title 49 of the Code of Federal Regulations be republished and be amended to read as follows:

Subpart B—Canons of Conduct

Sec.

AUTHORITY: The provisions of this Subpart B issued under E.O. 11222 of May 8, 1965, 30 F.R. 6469, 3 CFR, 1965 Supp.; 5 CFR 735.–104.

NOTE: Forms prescribed by the regulations in this Subpart B are available upon request from the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

Amended February 11, 1976

RULES AND REGULATIONS

Subpart B—Canons of Conduct

§ 1000.735–11 General standard of conduct.

Members and employees of the Commission shall perform their duties so as to insure that the Interstate Commerce Act and related statutes are administered fairly and expeditiously and with a view to carrying out the National Transportation Policy. They shall be courteous and prompt in serving the public.

§ 1000.735–12 Prohibited financial interests.

Members and employees shall not be employed by or hold any official relation to, or own any securities of, or be in any manner pecuniarily interested in carriers to the extent prohibited by the Interstate Commerce Act. This Canon prohibits (1) any direct interest in any for-hire transportation company whether or not subject to the Interstate Commerce Act and (2) any interest in any company, mutual fund, conglomerate, or other enterprise which in turn has an interest of more than ten percent of its income from any for-hire transportation company whether or not subject to the Interstate Commerce Act. (The Commission, notation vote, October 2, 1973.) (39 FR 8326, March 5, 1974.)

§ 1000.735–13 Disqualifying interests.

Members and employees shall not participate in any matter in which they have a substantial pecuniary interest, or other interest which might affect or appear to affect their actions in this matter.

§ 1000.735–14 Gifts, entertainment, and favors.

(a) Members and employees of the Commission shall not solicit or accept, directly or indirectly, any gift, gratuity, entertainment, favor, loan, or any other thing of monetary value, which might reasonably be interpreted as being of such a nature that it could affect their impartiality, from any person, association, or group, that (1) has, or is seeking to obtain, contractual or other business or financial relationships with the Commission; or (2) conducts operations or activities that are subject to regulation by the Commission; or (3) has interests which may be substantially affected by the member's or employee's performance or nonperformance of his official duty; or (4) is in any way attempting to affect the member's or employee's official actions. The requirements of this subparagraph do not apply to (i) obvious family or personal relationships when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors; (ii) acceptance of food or refreshments of nominal value on infrequent occasions in the course of a luncheon, dinner, or other meeting or on an inspection tour where a member or employee may properly be in attendance; or (iii) acceptance of unsolicited advertising or promotional material of nominal intrinsic value, such as, pens, pencils, note pads, calendars, and other similar items. Neither this section nor

§ 1000.735–16 precludes members and employees to the extent permitted by law and approved by the Commission, from receiving bona fide reimbursement for actual expenses for travel and such other necessary subsistence, as is compatible with these Canons, for which no Government payment or reimbursement is made when attending industry meetings and conventions, but they shall not accept any payment for any discussion or appearance at such industry meetings or conventions or any reimbursement for excessive personal living expenses, gifts, entertainment, or other personal benefits. No reimbursement may be received from a non-Governmental source for travel on official business under Commission orders when reimbursement is proscribed as constituting, in effect, an unauthorized augmentation of the Commission's appropriations.

(b) Members and employees shall avoid any action, whether or not specifically prohibited herein, which might result in, or create the appearance of: (1) Using public office for private gain; (2) giving preferential treatment to any person; (3) impeding Commission efficiency or economy; (4) losing complete independence or impartiality; (5) making a Commission decision outside official channels; or (6) affecting adversely the confidence of the public in the integrity of the Commission.

(c) Members and employees shall not solicit a contribution from any other member or employee, or make a donation for a gift to a member or employee in a superior official position or accept gifts from members or employees receiving less salary than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift or donation of nominal value made on a special occasion such as marriage, illness, or retirement.

(d) Members and employees shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

§ 1000.735–15 Disclosure and misuse of information.

Members and employees of the Commission shall not use for personal gain or disclose to unauthorized persons confidential information not available to the general public. They shall not disclose or release official information prior to the time authorized for its release.

§ 1000.735–16 Outside employment and other activity.

(a) Members and employees shall not engage in any outside employment or other outside activity, including teaching, lecturing, writing, consultation, discussion or appearance, with or without compensation, in circumstances which might (1) reasonably result in a conflict of interest or an apparent conflict of interest between his private interests and his official Government duties and responsibilities; or (2) interfere with the efficient performance of his official duties; or (3) bring discredit upon, or cause unfavorable criticism of, the Commission.

(b) Advance authorization for employees to engage in outside employment or other outside activity described in paragraph (a) of this section, in any event, shall be obtained from the Director of Personnel, via supervising channels. See ICC Manual-Administration, pp. 22–781 and 24–311.

§ 1000.735–17 Future employment.

If a member or employee of the Commission entertains a proposal for future employment by any person subject to regulation by the Commission or by associations or representatives of such persons, such member or employee should refrain from participating in the decision or disposition of any matter in which such person, association or representative is known to have a direct or substantial interest, both during such negotiation and, if such employment is accepted, until he severs his connection with the Commission.

§ 1000.735–18 Ex parte communication.

Members and employees of the Commission must conform to the standards adopted by the Commission on July 1, 1963, reprinted in Appendix C of the General Rules of Practice of the Commission (Part 1100 of this chapter).

§ 1000.735–19 Use of Federal property.

Members and employees of the Commission shall not directly or indirectly use, or allow the use of, Federal property of any kind, including property leased to the Government, for other than officially approved activities. They also have a positive duty and responsibility to protect and conserve all Federal property, including equipment, supplies and other property, which is entrusted or issued to them.

§ 1000.735–20 Use of intoxicants.

Members and employees of the Commission shall not consume intoxicants so as to impede the discharge of their official duties.

§ 1000.735–21 Indebtedness.

Members and employees shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court or one imposed by law such as Federal, State or local taxes, and "in a timely manner" means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as his employer. In the event of dispute between an employee and an alleged creditor, this section does not require an agency to determine the validity or amount of the disputed debt.

§ 1000.735–22 Immoral or notoriously disgraceful conduct.

Members and employees of the Commission shall not engage in criminal, infamous, dishonest, improper or disgraceful conduct which violates common decency or morality or subjects the Commission to adverse criticism or disrepute.

§ 1000.735–23 Intermediaries.

Members and employees of the Commission shall not recommend or suggest the use of any nongovernmental intermediary (individual, firm, corporation, or other entity) offering any service as consultant, agency representative, attorney, expeditor, or specialist for the purpose of assisting in any negotiations, transactions, or other business with or before this Commission: *Provided, however*, That making available general reference lists of such nongovernmental intermediaries, the use of which is authorized by the Secretary of the Commission, shall not be deemed to be in violation of this section.

§ 1000.735–24 Gambling, betting, and lotteries.

Members and employees shall not participate, while on federally-owned or leased property or while on duty for the Commission, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip, ticket, chance, voice, share or any other similar device.

§ 1000.735–25 Miscellaneous statutory provisions.

Each member and employee shall acquaint himself with the statutory provisions in Appendix II to this subpart which relate to his ethical and other conduct as a member and employee of the Commission and the Government.

§ 1000.735–26 Statements of employment and financial interests.

(a) All employees in the positions specified in Appendix I to this subpart shall submit to the Director of Personnel within 90 days from the effective date of the regulations in this subpart, or if appointed after said effective date, within 30 days after his entrance on duty, a confidential statement of employment and financial interests on ICC Form No. 1164 Pursuant to the grievance procedures enumerated in ICC Manual-Administration, pp. 22–725, employees so specified may file and have reviewed a complaint that his position has been improperly designated as one requiring the submission of a statement of employment and financial interests.

(b) Any changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. Where no changes or additions occur, a negative report is required.

(c) The financial statements required by this section are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of financial statements by employees does not permit him or any other person to participate in matters in which participation is prohibited by law, order, or regulation. Notwithstanding the filing of such statements, employees shall at all times avoid acquiring a financial interest that could result, or taking an action that would result in a violation of the conflicts-of-interest provisions of 18 U.S.C. 208, or these Canons of Conduct.

(d) The interest, if any, of a spouse, minor child, or any blood relation who is a member of, and resident in an employee's immediate household shall be reported as his interest. If that information is to be supplied by others, it should be so indicated in Part IV of ICC Form 1164.

(e) In the event any of the required information, including holdings placed in trust, is not known to the employee but is known to another person, the employee should request that other person to submit the information on his behalf and should report such request in Part IV of ICC Form 1164.

(f) Employees are not required to submit any information relating to their connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or any similar organization not conducted as a business enterprise and which is not engaged in the ownership or conduct of a business enterprise. Educational and other institutions doing research and development or related work involving grants of money from contracts with the Government are deemed "business enterprises" for purposes of this report and should be included.

§ 1000.735–27 Review of statements of employment and financial interests.

(a) Financial statements shall be held confidential. An officer or employee charged with the review thereof is responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, such statements except to carry out the purposes of these Canons and as the Chairman of the Civil Service Commission may determine for good cause shown.

(b) The Director of Personnel shall review the annual statements and supplementary statements of employment and financial interests for the purpose of ascertaining the existence of conflicts of interests on the part of employees and shall notify the employee concerned, who shall promptly submit an explanation of the conflicts or appearance of conflicts of interest to the Director of Personnel.

(c) The Director of Personnel shall seek the advice of the General Counsel when there is a conflict or appearance of conflict of interest. The General Counsel shall render his opinion to the Director of Personnel who shall inform the employee of necessary steps to be taken to remedy the situation. If the matter is not resolved by appropriate action of the employee or otherwise, the Director of Personnel shall report the conflict or appearance of conflict through the Managing Director and the General Counsel (who is the counselor for the agency) to the Chairman.

(d) Upon consideration of the employee's explanation and the report of the General Counsel, the Chairman shall decide and direct, if necessary, the Director of Personnel to take immediate and appropriate disciplinary or other remedial action to end the conflict or apparent conflict of interest in accordance with the appropriate procedures specified in ICC Manual—Administration, beginning on p. 22–761.

§ 1000.735–28 Interpretation and advisory service.

(a) The Director of Personnel shall furnish a copy of the Canons of Conduct to each member and employee immediately upon issuance and to each new member and new employee upon his entrance on duty and shall thereafter, annually or as circumstances may warrant, bring to the attention of each member and employee the Canons of Conduct and all revisions thereof.

(b) Legal advice shall be provided to members and employees with respect to interpretations of these Canons of Conduct, questions of conflicts of interest, or any other matters covered therein by designation of a Counselor and Deputy Counselors by the Chairman.

§ 1000.735–29 Specific provisions governing special Government employees.

(a) A special Government employee, as defined in 18 U.S.C. 202, shall not use (1) his Government employment for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for himself or another person particularly one with whom he has family, business, or financial ties; (2) any inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties; or (3) his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

(b) Special Government employees shall adhere to all Canons of Conduct specified in this subpart except §§ 1000.735–16(b) and 1000.735–26. In lieu thereof, each special Government employee shall submit a statement of his employment and financial interests on ICC Form No. 1163, to the Director of Personnel at the time of his employment and shall keep his statement current throughout his employment by submitting supplementary statements whenever any change in, or addition to, the information contained in his statement occurs.

APPENDIX I: LIST OF EMPLOYEES REQUIRED TO SUBMIT ICC FORM NUMBER 1164 (49 CFR 1000.735–26)

OFFICE OF THE MANAGING DIRECTOR

1. Managing Director.
2. Assistant Managing Director.
3. Assistant to the Managing Director (Information Systems).
4. Assistant to the Managing Director (Attorney Advisor).
5. Director of Personnel.
6. Budget and Fiscal Officer.
7. Assistant Budget and Fiscal Officer.
8. Chief and Assistant Chief, Section of Administrative Services.
9. Chief and Assistant Chief, Section of Systems Development.
10. Chief, Procurement and Property Management Branch, Section of Administrative Services.
11. Computer Equipment Analyst, Section of Systems Development.
12. Regional Managers.

OFFICE OF THE SECRETARY/CONGRESSIONAL RELATIONS

1. Secretary/Congressional Relations.
2. Assistant Secretary.
3. Deputy Congressional Relations Officer.

OFFICE OF THE GENERAL COUNSEL

1. General Counsel.
2. Deputy General Counsel.
3. Chief, Section of Litigation.
4. Chief, Section of Research and Opinions.
5. Chief, Section of Legislation.

OFFICE OF RAIL SERVICES PLANNING

1. Director.
2. Associate Director.
3. Chief, Section of Public Counsel.
4. Chief, Section of Subsidy Assistance.

OFFICE OF HEARINGS

1. Chief Administrative Law Judge.
2. Assistant Chief Administrative Law Judges.
3. Administrative Law Judges.

OFFICE OF PROCEEDINGS

1. Director.
2. Associate Director.
3. Deputy Directors.
4. Assistant Deputy Directors.
5. Branch Chiefs, Section of Finance.
6. Branch Chiefs, Section of Rates.
7. Branch Chiefs, Section of Operating Rights.
8. Chief, Section of Case Control and Information.
9. Chairman and Members, Review Boards.
10. Chairman and Members, Motor Carrier Board.
11. Chairman and Members, Finance Board.

BUREAU OF ACCOUNTS

1. Director.
2. Assistant Director.
3. Assistant to the Director.
4. Chief, Section of Audit.
5. Chief and Assistant Chief, Section of Reports.
6. Chief, Section of Accounting.
7. Chief, Rule Making Branch, Section of Accounting.
8. Chief, Interpretations Branch, Section of Accounting.
9. Chief, Depreciation Branch, Section of Accounting.
10. Chief, Section of Cost and Valuation.
11. Chief, Cost Analyses Branch, Section of Cost and Valuation.
12. Chief, Cost Development Branch, Section of Cost and Valuation.
13. Chief, Valuation Branch, Section of Cost and Valuation.
14. Chief, Section of Financial Analysis.
15. Chief, Formal Cases Branch, Section of Financial Analysis.
16. Chief, Early Warning Branch, Section of Financial Analysis.
17. Chairman and Members, Accounting Board.
18. Chairman and Members, Valuation Board.
19. Regional Auditors.

BUREAU OF ECONOMICS

1. Director.
2. Assistant Director.
3. Chief, Section of Financial and Pricing Analysis.
4. Chief, Section of Rail and Water Carrier Analysis.
5. Chief, Section of Motor Carrier and Pipeline Analysis.
6. Chief, Section of Economic Projections and Forecasting.

7. Chief, Section of Mathematics and Statistics.

BUREAU OF ENFORCEMENT

1. Director.
2. Assistant Director.
3. Chief, Section of Rail Enforcement.
4. Chief, Section of Motor, Water and Forwarder Enforcement.
5. Chief, Court Enforcement Branch, Section of Motor, Water and Forwarder Enforcement.
6. Chief, Administrative Proceedings Branch, Section of Motor, Water and Forwarder Enforcement.
7. Special Projects Manager.
8. Regional Counsels.
9. Assistant Regional Counsels.

BUREAU OF OPERATIONS

1. Director.
2. Assistant Director.
3. Assistant to the Director (Special Projects).
4. Assistant to the Director (Emergency Preparedness).
5. Chief, Water Carriers and Freight Forwarder Investigations.
6. Chief and Assistant Chief, Section of Insurance.
7. Chief and Assistant Chief, Section of Motor Carriers.
8. Chief, Interpretations Branch, Section of Motor Carriers.
9. Chief, Motor Carrier Program Branch, Section of Motor Carriers.
10. Chief, Household Goods Branch, Section of Motor Carriers.
11. Chief and Assistant Chief, Section of Railroads.
12. Chief, Compliance Branch, Section of Railroads.
13. Chief, Utilization Branch, Section of Railroads.
14. Chief, Passenger Service Branch, Section of Railroads.
15. Chairman and Members, Insurance Board.
16. Chairman and Members, Railroad Service Board.
17. Chairman and Members, Motor Carrier Leasing Board.
18. Regional Directors (Operations).
19. Assistant Regional Directors (Operations).

BUREAU OF TRAFFIC

1. Director.
2. Assistant Director.
3. Chief and Assistant Chief, Section of Tariffs.
4. Chief, Tariff Examining Branch, Section of Tariffs.
5. Chief and Assistant Chief, Section of Rates and Informal Cases.
6. Chief, Informal Rate Case Branch, Section of Rates and Informal Cases.
7. Chairman and Members, Suspension and Fourth Section Board.
8. Chairman and Members, Special Permission Board.
9. Chairman and Members, Released Rates Board.
10. Chairman and Members, Tariff Rules Board.

These revisions approved by the U.S. Civil Service Commission on January 20, 1976. These revisions become effective February 11, 1976.

(E.O. 11222 of May 9, 1965, 30 FR 6469, 3 CFR, 1965 Supp.; 5 CFR 735.104

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.76-4194 Filed 2-10-76;8:45 am]

APPENDIX II—MISCELLANEOUS STATUTORY PROVISIONS

Each employee has a positive duty to acquaint himself with each statute that relates to his ethical and other conduct as an employee of the Interstate Commerce Commission and of the Government. Therefore, each member and employee shall acquaint himself with the following statutory and nonstatutory provisions which relates to his ethical and other conduct:.

1. House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the Code of Ethics for Government Service;

2. The prohibition against bribery of public officials (18 U.S.C. 201) which imposes a maximum penalty of $20,000 fine or three times the money or thing received, whichever is greater; 15 years' imprisonment; or both; and removal;

3. The prohibition against receiving compensation for claims, contracts, etc. (18 U.S.C. 203), which imposes a maximum penalty of $10,000 fine; 2 years' imprisonment; or both; and removal;

4. The prohibition against prosecuting claims against and other matters affecting the Government (18 U.S.C. 205), which imposes a maximum penalty of $10,000 fine; 2 years' imprisonment; or both;

5. The prohibition against prosecuting claims involving matters connected with former duties—disqualification of partners (18 U.S.C. 207), which imposes a maximum penalty of $10,000 fine; 2 years' imprisonment; or both;

6. The prohibition against an interested person acting as a Government agent (18 U.S.C. 208), which imposes a maximum penalty of $10,000 fine; 2 years' imprisonment; or both;

7. The prohibition against salaries or contributions from other than Government sources (18 U.S.C. 209), which imposes a maximum penalty of $5,000 fine; 1 year imprisonment; or both;

8. The prohibition against acceptance of solicitation to obtain public office (18 U.S.C. 211), which imposes a maximum penalty of $1,000 fine; 1 year imprisonment; or both;

9. The prohibition against lobbying with appropriated funds (18 U.S.C. 1913), which imposes a maximum penalty of $500 fine; 1 year imprisonment; or both; and removal;

10. The prohibition against disloyalty and striking (5 U.S.C. 7311; 18 U.S.C. 1915), which imposes a maximum penalty of $1,000 fine; 1 year and a day's imprisonment; or both; and removal;

11. The prohibition against employment of member of Communist organization (50 U.S.C. 784), which imposes a maximum penalty of $10,000 fine; 5 years' imprisonment; or both; and removal;

12. The prohibition against disclosing of classified information (18 U.S.C. 789, 50 U.S.C. 783), which imposes a maximum penalty of $10,000 fine; 10 years' imprisonment; or both;

13. The prohibition against disclosing of confidential information (18 U.S.C. 1905), which imposes a maximum penalty of $1,000 fine; 1 year imprisonment; or both; and removal;

14. The prohibition against habitual use of intoxicants to excess (5 U.S.C. 7352), which imposes a maximum penalty of removal;

15. The prohibition against the misuse of Government vehicles (31 U.S.C. 638a(c)), which imposes a maximum penalty of removal;

16. The prohibition against the misuse of franking privilege (18 U.S.C. 1719), which imposes a maximum penalty of $300 fine;

17. The prohibition against the deceit in examination or personnel action (18 U.S.C. 1917), which imposes a maximum penalty of $1,000 fine; 1 year imprisonment; or both;

18. The prohibition against fraud and false statement (18 U.S.C. 1001), which imposes a maximum penalty of $10,000 fine; 5 years' imprisonment; or both;

19. The prohibition against mutilating or destroying public records (18 U.S.C. 2071), which imposes a maximum penalty of $2,000 fine; 3 years' imprisonment; or both; and removal;

20. The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508), which imposes a maximum penalty of $5,000 fine; 10 years' imprisonment; or both;

21. The prohibition against embezzlement and theft of Government money, property, or records (18 U.S.C. 641), which imposes a maximum penalty of $10,000 fine; 10 years' imprisonment; or both;

22. The prohibition against failure to account for public money (18 U.S.C. 643), which imposes a maximum penalty of fine equal to amount embezzled; imprisonment not more than 10 years; or both;

23. The prohibition against wrongfully converting property of another (18 U.S.C. 654), which imposes a fine equal to amount embezzled; imprisonment not more than 10 years; or both·

24. The prohibition against unauthorized use of documents relating to duties (18 U.S.C. 285), which imposes a maximum penalty of $5,000 fine; 5 years' imprisonment; or both;

25. The prohibition against political activity (Subch. III of Ch. 73, of Title 5, U.S.C.), which imposes a maximum penalty of removal;

26. The prohibition against solicitation of political contributions (18 U.S.C. 602), which imposes a maximum penalty of $5,000 fine; 3 years' imprisonment; or both;

27. The prohibition against solicitation of political contributions in Federal buildings (18 U.S.C. 603), which imposes a maximum penalty of $5,000 fine; 3 years' imprisonment; or both;

28. The prohibition against making political contributions (18 U.S.C. 607), which imposes a maximum penalty of $5,000 fine; 3 years' imprisonment; or both;

29. The prohibition limiting political contributions and purchases (18 U.S.C. 608) which imposes a maximum penalty of $5,000 fine; 3 years' imprisonment; or both;

30. The prohibition against making a donation as a gift to an employee in a superior official position (5 U.S.C. 7351);

31. The prohibition against holding stocks or having other pecuniary interest in any mode of transportation (49 U.S.C. 11 and 305(1));

32. The prohibition against participating in any hearing or proceedings in which there is pecuniary interest (49 U.S.C. 17(3)); and,

33. The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

Question 33.

Do you see any reason why the appropriate Congressional committees and even the general public should not receive these reports?

As indicated in our response to questions 28 and 29, we are very concerned about the public impact of these reports. We have tried to keep Congress adequately informed of the financial condition of the railroads, but if the appropriate Congressional committees believe that they must have the reports themselves, we of course will supply them. If this is done, however, we would urge the committees to keep the reports confidential because public disclosure could result in irreparable harm and even cause further deterioration of a carrier's financial condition. For example, shippers, fearing a possible shutdown or inability to pay loss and damage claims, are likely to divert traffic to other carriers in the same or other modes. Suppliers, fearing nonpayment, could cut off credit. Sources of financing might dry up or borrowing, if available, could be at higher interest rates. Investors could panic, causing market prices of stock and bond issues to decline precipitously.

Question 34.

Please supply the Subcommittee with all Early Warning System reports from the time this system was established until January of 1976.

Since we have been specifically requested to supply this material by a Congressional Subcommittee with jurisdiction over certain of our activities, we are responding to that request by supplying the reports, which are attached.

Attachment

35. Are car hire rates set at correct levels at the present time?

In general, the carriers have the managerial prerogative to establish rates. The Hanna Mining Co. v. Missouri Pac. R. Co., 332 I.C.C. 166. In No. 33145, Railroad Freight Car Per Diem Charges (embraced in No. 31358, Chicago, B. & Q. R. Co. v. New York, S. & Western R. Co., 332 I.C.C. 176), the Commission established regulations under which the carriers are able to establish basic per diem or car hire rates under section 1(14) of the Act. The carriers since that time have frequently updated their car hire rates by petition to the Commission.

In general, car hire rates are adjusted annually, the latest adjustment having taken effect on February 1, 1976, under a Commission order of December 18, 1975. This adjustment was based on data as to repair costs, taxes, car utilization and mileage, and capital costs for the three years 1972 through 1974, since 1975 data were not yet available. To the extent that such adjustments based on retrospective data do not fully reflect the current effects of inflation on prices, labor costs, and interest rates, it could be argued that per diem rates are never at correct levels during an inflationary period. The same, of course, could also be said of freight rates and of the prices of many commodities and services which lag behind the rate of inflation.

If per diem rates (or freight rates), were to be established on a

prospective basis, building into them inflationary expectations rather than experienced costs, the effect might be to accelerate the trend of inflation. In the short term, at least, this might benefit the owners of freight cars, but it would impose a heavy burden on those railroads which, in the nature of their operations, are net per diem debit roads. It would also impose a burden on shippers and on consumers.

Section 212 of the Rail Act, P.L. 94-210, requires the Commission to revise its rules, regulations and practices with respect to car service. The Commission, of course, will move to implement that Congressional mandate.

(a) If so, why is car utilization poor?

Car utilization is affected by many factors beyond per diem rates. Logistical imbalance is one which, in our time, may be impossible to overcome. More full cars move east and north than vice versa. This is attributable to the Nation's economics. Bulky foods and raw materials come from the west and south, including such things as lettuce, watermelons, citrus fruits, grain, lumber, iron ore, coal, copper ore, etc. They move to the populous area east of the Mississippi River and north of the Ohio River, where almost half the Nation's population lives on about one-eighth of the country's land area. The enormous population centers like New York, Philadelphia, Boston,

and Baltimore-Washington require these bulk materials for food, housing clothing and raw materials. In return, the commercialized and industrialized northeast produces services and manufactured goods, including such things as transistors, which require considerably fewer cars than the number coming east and north.

Another important factor in car utilization is detention of freight cars for loading and unloading by shippers and consignees, who seem to be influenced primarily by the amount of free time for loading and unloading and the level of demurrage charges. Deteriorated facilities and congestion at yards and ports also contribute to the car utilization problem. Another factor, which may not be measurable, is that some carriers are not efficient in moving cars to places where they are needed. Utilization is also affected by business cycles, by the continuation in service of light density lines on which service is infrequent, and by the multiplicity of routings available to shippers.

If per diem rates were raised above a compensatory level, they would have some effect in causing railroads to expedite the return of cars to the owning roads. It should be recognized, however, that to the extent such expedited return is artificially stimulated, it is likely to be accompanied by an increase in uneconomic movement of empty freight cars.

(b) Why are there car supply problems?

Car supply problems, to the extent they occur, arise primarily because of the peaks and valleys in the movement of certain commodities and in business cycles. Some commodities, such as grain, for example, tend to move in heavy volume during the harvest season, or at times when grain prices are favorable. At the current levels of equipment prices and interest rates, the railroads simply cannot afford to keep on hand sufficient cars of preferred types to meet the extreme peaks of demand, when these cars may be idle for extended periods of time. During the past recession year, for example, thousands of freight cars of almost every type have been idle on the tracks of their owners, generating no revenues and earning no per diem. At present, there does not appear to be any car shortage of consequence.

(c) Why is the incentive per diem program needed?

The incentive per diem program is essential if the small shipper is to be accorded a fair share of railroad services including the furnishing of boxcars for transportation of his goods. The Commission acted to implement its incentive per diem program after the amendment of section 1(14)(a). That provision and the Commission's action thereunder was and is essential to stem

the rapid and continuous decline in the overall supply of general service boxcars. The incentive per diem program although in its infancy has provided an affirmative directive to the carriers in meeting the needs of the small shippers.

The program was initiated with the aim of directing a flow of per diem funds into increased purchases of plain boxcars, as a result of shipper complaints that supplies of such cars were inadequate in certain periods. In recent years there has been a trend toward the use of specialized equipment such as covered hoppers for grain and other fungible commodities which once moved in boxcars, and also toward oversized, wide-door, and specially equipped boxcars for certain types of merchandise. The result was a decline in the numbers of 40 foot plain boxcars available to shippers who still preferred this type of car. Incentive per diem is intended to arrest this decline by encouraging the acquisition and better utilization of these cars by carriers wanting to avoid the incentive payment for use of cars of other carriers.

(d) If not, what is the ICC doing to ensure that they are set at correct levels?

It is assumed that this question refers to the current level of per diem rates, which was addressed above. As stated, the current practice is that per diem rates are adjusted annually, based on the experienced costs of the most recent three year period. This procedure has the admitted defect that per diem rates are never quite in step with current prices and interest rates in an inflationary period. It may be noted, however, that the most recent

trend of interest rates has been downward, although labor and material rates continue to rise.

As noted above, section 212(b) of the Rail Act requires the Commission to review and revise its car service and car hire rules after notice and an opportunity for hearing. A proceeding for this purpose, in which the views of all interested parties will be entertained, will be commenced in the near future.

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36. What is the ICC's role in establishing line haul revenue sharing agreements between railroads?

Section 1(4) of the Interstate Commerce Act imposes upon the railroads an affirmative duty, "in the case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers", whereas Section 3(4) of the Act prohibits discrimination by such carriers "in their rates, fares, and charges between connecting lines**". Thus, the Act places the primary responsibility of establishing just, reasonable and equitable divisions upon the carriers themselves, and the Commission has traditionally encouraged them to settle divisions disputes voluntarily.

The Commission's "role in establishing line haul revenue sharing agreements between railroads" is predicated upon the provisions of Section 15(6) of the Act, which confers upon the Commission the power to prescribe divisions whenever, after full hearing upon complaint or upon its own initiative, the Commission finds that the divisions of revenue in issue are or will be unjust, unreasonable, and inequitable. In resolving divisions disputes, these provisions require that consideration be given to the following factors:

(a) The efficiency with which the carriers concerned are operated.

(b) Amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation.

(c) Importance to the public of the transportation services of such carriers.

(d) Whether any particular participating carrier is an originating, intermediate, or delivering line.

(e) Any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

In general, there are seven essential parts of any divisions case, i.e., traffic study, cost study, revenue need considerations, application of unit costs to traffic service units, development of integer scale and its use, comparisons of revenue under present divisions with costs within each territory, and comparisons of revenue divided on cost-related percentages and analysis of the shift in revenue as between the territories.

From the foregoing, it can be readily seen that there is no single test or yardstick that can be used to handle all divisions of revenue cases. However, in recent years cost standards have been of significant importance in prescribing divisions of revenue. Inasmuch as the burden of establishing the existence of unfair and unequitable divisions of revenue rests upon the complaining carrier or carriers, it is up to them to prove their case before the Commission by presenting appropriate financial, traffic, operational and cost data from which meaningful cost studies can be developed to ascertain the relative costs the carriers incur in handling the issue traffic. Often joint traffic studies are needed, and the Commission has issued orders resolving disputes such as the size of the sample of traffic to be studied. The Commission also stands ready to hold

pretrial hearings or conferences or to take whatever action is necessary to expedite the resolution of disputes and to make certain that an adequate record is promptly assembled.

Basically, the Commission's role in establishing line haul revenue sharing agreements between railroads is to encourage the railroads themselves to fulfill their statutory obligations under Section 1(4) and Section 3(4) of the Act, to oversee complaint proceedings to make sure that meaningful evidence is assembled in an expeditious manner, and to prescribe new divisions as expeditiously as practicable upon finding that the divisions of the joint rates in issue are and will be unjust, unreasonable and inequitable. Pursuant to Section 201 of the Railroad Revitalization and Regulatory Reform Act of 1976, the Commission is now in the process of instituting a new rulemaking proceeding for the purpose of promulgating new rules, standards and procedures for expediting the handling of divisions of revenue cases.

37. What does ICC plan to do about the administrative difficulties with the incentive per diem program?

The incentive per diem program was instituted under Ex Parte No. 252 (Sub-No. 1). The Commission, on its own initiative, has reopened this proceeding on two occasions and has revised its rules and regulations concerning the application of incentive per diem and the disposition of funds collected. These actions have always been toward alleviating difficulties and resolving problems in the administration of the incentive per diem program. Also, among other questions, the proceeding to be initiated under Section 212(b) of the Rail Act, mentioned above, will be addressed to such administrative difficulties as exist in the program.

38. Is it true that Union Pacific has amassed some $50 million in funds through the collection of its incentive per diem? Have these funds been put to the purchase of new cars? If not, why not?

1. Through December 31, 1974, Union Pacific has collected, $24,935,764 in incentive per diem funds. This includes interest collected on incentive per diem funds invested in government bonds or other interest bearing temporary securities. Incentive per diem collected in 1975 has not yet been reported. The Union Pacific has not applied any income taxes against their $24,935,764 of incentive funds. It is currently involved in a dispute as to whether income taxes apply at the time of receipt or disbursement of the funds. Therefore the actual amount of these funds available for acquisition of cars may be reduced considerably.

2. Union Pacific has not yet expended any of its incentive per diem funds.

3. (a) The Commission's Rules for use of incentive per diem funds originally restricted the funds to general service unequipped boxcars. Union Pacific contends that it has no need for additional unequipped boxcars. This was later modified to include special boxcars used for carrying food.

(b) The Commission's Rules permit the expenditure of incentive per diem funds only after the railroad has met its normal car building or purchase requirement. This norm is based on the average number of cars built, rebuilt or purchased during the period 1964-1968. Union Pacific maintains that its norm for the 1964-1968 is so large that it cannot afford to meet it in order to have access to incentive per diem funds.

(c) Although Union Pacific could rebuild cars, it does not consider this an economical way to put more cars into service.

(d) The Commission issued an order on April 8, 1975 which requires incentive per diem creditor railroads to spend the funds collected within 18 months from the end of the year in which collected. The order further stated "If the carrier fails within the stated period to put to use collected earmarked funds which result in a net credit balance, has not obtained relief from that requirement, and has not surrendered such funds to Rail Box, the Commission will investigate the matter to determine what, if any, corrective action is warranted. Appropriate corrective action would include section 16(12) remedies among others." However, this requirement does not apply to monies collected prior to the date of the order.

The Commission also provided in that order, a means for overcoming difficulties in meeting the test period average by making the following provision:

"However, upon application, including a showing that all parties to the proceeding herein have been notified by the carrier of such application and a showing of good cause why any carrier is unable to draw down in whole or in part the net credit balance resulting from incentive per diem settlements because it cannot comply with the above test period average requirements of having in the same calendar year built, rebuilt, leased, or purchased its 1964-68 average number of such boxcars and made up any arrearage in having failed to maintain such average each year this order is in effect, the Commission may,

in its discretion, after consideration of all views regarding the application, modify the test period average to the extent consistent with the public interest and the national transportation policy. Such modification, at a minimum, shall require that a carrier match the earmarked funds it will use with an equal amount of its own funds."

39. Section 304(b) of the new Railroad Revitalization and Regulatory Reform Act of 1976 guarantees a right of any "interested person" to petition the ICC to take any action relating to railroads. The Commission is required to answer each such petition within 120 days. If it deems the petition unworthy of action or fails to answer it within 120 days, the petitioner may sue, under a rather liberal evidentiary standard, to force the Commission to commence the proceeding. Has the Commission received any such petitions since passage of this Act?

Section 304(b) of the Railroad Revitalization and Regulatory Reform Act requires prompt Commission action whenever, pursuant to section 553(e) of the Administrative Procedure Act, 1/ an interested person petitions the Commission for the commencement of a proceeding for the issuance, amendment, or repeal of an order, rule, or regulation relating to common carriers by railroads.

Since the enactment of the new legislation, we have not received any formal petitions under Section 304(b) seeking the institution of rulemaking proceedings, as contemplated in section 553(e) of the Administrative Procedure Act.

1/Section 553 of the Administrative Procedure Act relates to rulemaking proceedings.

(40) The Commission's Assessment of the Importance of the Phrase Market Dominance

The phrase market dominance contained in section 202 of the "Railroad Revitalization and Regulatory Reform Act of 1976" introduces a new concept into the Commission's regulatory powers vis-a-vis railroad ratemaking. As noted by the Commission in its notice of proposed rulemaking and order issued in Ex Parte 320, Special Procedures for Making Findings of Market Dominance as Required by the Railroad Revitalization and Regulatory Reform Act of 1976, a determination of market dominance is a threshold test designed to focus the Commission's regulatory efforts in areas where competition is insufficient to protect the public from unjust and unreasonable rates. Conversely, rail carriers are given flexibility to increase rates where there is effective competition.

The Commission must make a finding of market dominance prior to suspension of a rate increase of 7% or less, pursuant to section 15 of the Interstate Commerce Act. In addition, whenever a rate is challenged as being unreasonably high, the Commission must determine, within 90 days, whether the carrier has market dominance. No rate may be found unjust or unreasonable, on the ground that it exceeds a just or reasonable maximum charge for a service, unless the Commission has found that the carrier has market dominance.

The concept is viewed by the Commission as being important in the substantive and procedural changes it makes in the Commission's functions.

(41) Difficulties in Defining Market Dominance

The Commission does not foresee unsurmountable difficulties in arriving at a standard definition of market dominance. Congress has already defined market dominance as being "a lack of effective competition from other carriers or modes of transportation, for the traffic or movement to which a rate applies." A more precise definition would remove the flexibility needed for making determinations in the various fact situations which will arise. The Commission's approach, as embodied in its notice of proposed rulemaking and order in Ex Parte 320, is to identify fact situations which will establish a rebuttable presumption that a carrier has market dominance. The presumptions are intended to facilitate the making of a decision in an area where there are no well-defined guidelines and little applicable precedent.

Difficulties are, however, encountered in setting up presumptions that will result in reasonable determinations of market dominance. The Commission has proposed the use of seven fact situations, the existence of any one of which will give rise to a rebuttable presumption that the carrier whose rates are in issue has market dominance over the involved service. The fact situations are as follows:

(1) Where the rate in issue has been discussed or considered in proceedings before a rail carrier rate bureau acting under an agreement filed with and approved by the Commission pursuant to section 5b, or the former section 5a, of the Interstate Commerce Act;

(2) Where no other carrier of any mode has handled a significant amount of the involved traffic for at least one year preceding the filing of the proposed rates;

(3) Where other carriers of any mode have handled a significant amount of traffic but there is no evidence of actual price competition in the past three years;

(4) Where the rate in issue exceeds the rate(s) charged by carriers offering the same or interchangeable service between the points involved by 25 percent or more;

(5) Where the rate at issue exceeds the fully allocated cost of providing the service by 50 percent or more;

(6) Where the distance between origin and destination exceeds 1,500 miles, except that when the involved movement occurs as a single-line

movement. Market dominance may be presumed where the distance exceeds 1,200 miles, providing, however, in either instance that when a rate is subject to a minimum weight, such minimum weight shall equal or exceed 20 net tons;

(7) Where the commodity moving under the rate in issue customarily moves in bulk shipments.

As pointed out in the notice of proposed rulemaking, the first situation is a direct outgrowth of language contained in the Conference Report which accompanied the Act. In the report, Congress stated that since the new section 5(b) permits consideration of rates free from the antitrust restrictions which would otherwise control competitive markets, the committee intended that there would be presumed to be an absence of effective competition between railroads with respect to any rate discussed or considered under an agreement approved by the Commission pursuant to section 5(b).

The second fact situation is concerned with market share and the third with pricing behavior as an indication of market power. The fourth situation concerns the ability of a carrier to exact a premium for its service through a comparison with rates charged by other carriers for like

services. The fifth situation is grounded in the concept of monopoly pricing. Finally, the sixth and seventh situations relate to services and commodities that the railroads have traditionally been in a position to monopolize.

Initial verified statements are due on or before April 15, 1976. Verified statements in reply will be filed on or before May 5, 1976. Following receipt of these comments, the Commission will be in a position to establish standards for making findings of market dominance.

ATTACHMENT C - CONGRESSMAN NOLAN'S LETTER

Congressman Nolan's letter urges the desirability of subcommittee hearings on several questions related to the effects of railroad abandonments, and in particular suggests hearings in Southwestern Minnesota where there is much interest in these questions. This, of course, is a matter for the Committee to decide. However, it may be relevant to note that Section 503(d) of the Railroad Revitalization and Regulatory Reform Act of 1976 requires the Commission's Rail Services Planning Office to conduct public hearings at representative locations to solicit comments and receive views on the preliminary standards and designation of rail lines published by the Secretary of Transportation pursuant to section 503 (b) of that Act.

No schedule for these hearings has yet been established, but the terms of the statute require them to be held during August, September, and possibly October; and if the committee so desired, a hearing in Southwestern Minnesota probably could be included in the schedule. It is anticipated that the hearings will be informal and statements or material related to some of the questions propounded by Congressman Nolan would be welcome and relevant.

Congressman Nolan also states that in past ICC abandonment hearings the smaller communities have not proven to be much of a match against the railroads and thus, 99% of the railroad abandonment requests have been granted. Without necessarily agreeing entirely with this statement, it may be appropriate to note that this presumably was one of the factors Congress had in mind in establishing the Commission's Offices of Rail Services Planning and of Rail

Public Counsel. In the planning processes under the Regional Rail Reorganization Act of 1973, the staffs of these offices were available to assist State, regional, and community officials as well as other groups in coping with the light density line problems. They will be available in the future to assist with abandonment or subsidy questions under the new national rail services assistance program.

Below are some brief comments on the specific issues listed in Congressman Nolan's letter.

(1) What does adequate or inadequate rail transportation mean for this country?

There can be no question that adequate and economical transportation is a vital key to the economy and civilization of any country. Approximately 20% of U.S. gross national product is made up either directly or indirectly by transportation of one kind or another. Railroad revenues in 1974 constituted about 6% of the $275.8 billion estimated to have been contributed by transportation to gross national product. However, although the relative reliance on rail transportation in the United States had declined in the last fifty years, railroads are still vitally important for transportation of many farm products, industrial raw materials and finished products, forest products, and a wide variety of other commodities.

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(2) What is the amount of volume in trade that could be anticipated with regular railroad transportation to branch line communities?

We do not have any reliable basis for estimating a direct response to this question. Undoubtedly some information bearing on the subject will be developed from the hearings under Section 503(d) of the Railroad Revitalization and Regulatory Reform Act of 1976. Witnesses at the numerous hearings conducted during the Northeast rail restructuring process introduced voluminous testimony to the effect that better rail service and better car supply could increase the usage of certain branch lines and the value of product generated in their communities, but it is impossible to quantify these projections.

(3) Can railroads make money on these branch lines?

No categorical response can be given to this question; some branch lines are profitable and essential feeders to the trunk rail systems, while some are definitely unprofitable. The analyses of light density lines in connection with the Northeast restructuring did make clear, however, that although many of these lines are unprofitable, as a whole the light density lines excluded from the Final System Plan did not constitute as large a factor in the causes of the Northeast rail bankruptcies as many had anticipated, and that the root causes for these bankruptcies must be sought elsewhere.

(4) What are the energy implications of railroad versus other modes of transportation?

In answering this question, consideration must be directed primarily to the relative fuel efficiency between railroads and motor carriers. Attention has principally been focused on a 1972 study conducted for the National Science Foundation and another developed for the American Association of Railroads. These, together with research done for the National Science Foundation in 1973, have generally concluded that the railroad industry is approximately four times as fuel efficient as the motor carrier industry (measured by British thermal units per ton mile (BTU/ton mile)).

Various research studies have since been generated questioning the validity of this conclusion. These counter studies, generated during the past year, have gained considerable attention in recent weeks. Essentially, these studies call attention to causative factors which effect fuel efficiency.

Specifically, one study completed in 1975 developed energy consumption assessment techniques on 10 case studies of rail lines that varied in freight handled and geographical coverage. The study revealed that it is not necessarily true that rail is less energy intensive than motor carriage, even when bulk commodities are being hauled. Another study, using engineering simulator techniques to assess relative fuel efficiency, concluded that relative fuel

efficiency of rail over truck can be exaggerated or, in fact, erroneous in particular situations. The study also warned that shifting freight traffic from truck to piggyback may have little effect on energy consumption, particularly if the rail movement is at high speeds typical of truck operations. Another study now being completed for the Department of Transportation compares truck and rail operations between Portland, Oregon, and Los Angeles, California. This study indicates that, for this particular traffic corridor, the estimated total fuel consumption is nearly equal for truck and rail.

In light of these findings, both the rail and motor carrier industries are re-evaluating the implications of the fuel efficiency climate and can be expected to develop new evidence on relative fuel efficiency. The studies should also be of interest and concern to such Federal agencies as FEA, DOT, and ERDA, who have been developing policy positions and plans relative to fuel efficiency, fuel use, and fuel emergency conditions generally based on the earlier research findings. In broader perspective, the prospect of revised fuel efficiency factors could have substantial effect on environmental considerations.

At this time, it is not possible to evaluate the impact these new research efforts might or will have on policy or decisionmaking. But there is growing indication that the hertofore accepted norms in fuel efficiency relationships between carriers will be increasingly questioned and changed.

(5) What are the railroads' immediate and long-range abandonment plans?

Until recently the ICC did not have any way of knowing the railroads' immediate or long-range abandonment plans until an abandonment application was actually filed; nor was it clear that the individual railroads themselves had long-range abandonment plans. Usually a railroad would file an application to abandon a line when it determined either (a) that traffic on a branch line had diminished to the point that the line was unprofitable or (b) that the physical state of a line had deteriorated so that continued operation would require the investment of substantial rehabilitation funds, which could not be economically justified by traffic levels on the line. This situation should be improved however by the requirements of Section 802 of the Railroad Revitalization and Regulatory Reform Act of 1976 (P. L. 94-210) which amended the Interstate Commerce Act so as to require each railroad to submit to the Commission and publish a map showing each of its lines which it considers to be "potentially subject to abandonment," and which generally prohibits the abandonment of a line unless it has been so designated by the carrier for a period of at least 4 months prior to submission of application for a certificate permitting abandonment of the line.

(6) What are the implications for various sectors of our economy if adequate railroad transportation is not available?

The adverse effect on our economy if adequate railroad transportation were not available would be enormous. Railroads are the most efficient and economical non-water means of transporting large volumes of commodities over long distances. They presently handle about 38% of all intercity freight ton-miles transported in the United States; more than any other mode. In terms of manufactured articles alone, railroads, in the last year for which statistics are available, transported over 50% of all canned and frozen food products; chemicals, plastics and fibers; paper; lumber and wood products; primary iron and steel products; and motor vehicles and equipment. They transport an even greater proportion of bulk--non manufactured commodities, such as coal and grain. Other modes of transportation do not possess the capacity to handle the railroad's traffic; and in many cases economically efficient alternatives to railroad transportation do not exist. Thus without adequate railroad transportation, many industries would be severely disrupted and some might not be able to operate at all.

(7) The committee could solicit ideas from the people on how railroad service could be assured to branch line communities without incurring enormous costs to taxpayers.

The costs to taxpayers of providing service on unprofitable branch lines could be reduced by various means within the rail users' capabilities. On most lines, an increase in traffic would reduce the losses, as the greater revenues generated would contribute to the large fixed plant cost associated with railroad operations. Acceptance of less-frequent service on a line can reduce the operating costs incurred on the line. Concentration of traffic at a few locations (perhaps team track locations) could reduce the operating and switching costs incurred.

42. Does the ICC have authority to tell the carriers how to assign their non-unit train cars as well as their unit train cars when there is a need for them?

The Commission possesses broad authority, whether preceded by a complaint or investigation initiated by the agency on its own motion, under Section 3(1) of the Act, which prohibits undue preference and prejudice. The section's prohibition against "prejudice or disadvantage in any respect whatsoever" reaches car service matters as well as rate discriminations. If the Commission finds instances of prejudicial car distribution practices involving either non-unit-train cars or unit-train cars, it can prescribe nonprejudicial car distribution rules or guidelines intended to eliminate the Section 3(1) prejudice. See Assigned Cars, 346 I.C.C. 327.

In addition, Section 1(11) of the Act, which obligates carriers to establish and enforce just and reasonable rules, regulations and practices with respect to car service, provides further authority for a Commission order directing termination of unreasonable car service practices or tariff rules involving non-unit-train cars or unit-train. See Milmine Grain Company v. Norfolk and Western Railway Company, Docket No. 35912, decided February 5, 1976 (Div. 2), p. 15.

In times of emergency caused by an acute car shortage, the Commission has authority under Section 1(15) of the Act to suspend existing car service rules or practices and to issue car service directives which, in the opinion of the

Commission, "will best promote the service in the interest of the public and the commerce of the people".

The new RRRR Act, in Section 310, requires that unit-train service and non-unit-train service be considered and treated as separate and distinct classes of service but this provision applies only to coal cars in the application of Section 1(12) of the Interstate Commerce Act. In any event, the application of other provisions of Sections 1, 2, and 3 of the Interstate Commerce Act are still applicable to each of the two distinct classes of service.

43. If not, will the Commission ask Congress for this authority?

Under section 1(15) of the Act the Commission is authorized to act in an existing emergency. On numerous occasions the Commission has asked for authority so that it can act in a threatened as well as an existing emergency. See, for example, the Commission's Annual Report to the Congress, Fiscal Year 1972, page 90. Under section 1(16)(b) of the Act, the Commission has recently been authorized to direct a carrier to provide services where another rail carrier is unable to continue such service because of a number of stated reasons. Under section 309, P.L. 94-210, the Commission has been granted extensive planning functions in connection with rail service. Nevertheless, unless the Commission is given authority to take action in a threatened as well as an existing emergency under section 1(15) of the Act, its efforts to ameliorate a disruption in service may be somewhat hindered.

44. What will be the effect of the expanded use of unit trains on already over-burdened rail facilities?

In those situations where roadbed and/or trackage were not designed for heavy usage expanded use of unit trains could accelerate their deterioration and need for renewal. However, in those situations where the roadbed and trackage are capable of withstanding continuous heavy movements the expanded use of unit trains could have a beneficial effect by increasing tonnage, shortening turn-around time, improving car utilization and perhaps reducing the cost of operation. The cost question is being re-evaluated by the railroads themselves to determine, by test and on the basis of experience, whether the constant pounding of fast-moving, heavily-laden unit trains is exacting a greater toll in wear and tear than had at first been anticipated.

45. What effect will the expanded use of unit trains have on small shippers?

Theoretically at least, the expanded use of unit-train service should produce an overall improvement in car utilization because of the inherent efficiency of such service. However, to the extent that the usage of coal unit trains is expanded and general service cars shifted to that service, the pool of open-top hoppers available for general shipper use will be reduced. Consequently, the small-lot shipper of coal, aggregate, sand and gravel, sugar beets or other commodities utilizing open top hopper equipment, will have fewer cars available from which to meet his needs. Under normal circumstances a greater volume of coal moving in unit-train service would mean a lesser volume of coal moving in non-unit-train service and a general reduction in small-lot shipper demand. However, in the present growing energy market the demand for coal that can be produced only in non-unit-train volumes is expected to continue at a high level and perhaps even increase. Therefore, if cars utilized for such movements are shifted into unit-train service without corresponding increases in the general service pool, the quality of service available to the small shipper would have a tendency to deteriorate.

Question 46:

Why has the Commission not forwarded these forecasts to the Congress?

Question 47:

Why has the Commission not released these forecasts to the general public?

Please supply the Subcommittee with all transportation forecasting reports since the inception of this program.

The forecast reports referred to are reports known as the Carrier Outlook Reviews (COR), now prepared quarterly on an administratively confidential basis by the Bureau of Economics. These reviews were, until recently, in a developmental stage to measure from experience whether or not the econometric techniques employed could provide the Commission with a soundly based projection of the economic climate as it would impact the carrier industries. The work is highly innovative and pioneering in nature. Nothing comparable has been attempted either by the Commission or private industry. While having confidence in the process and techniques, the Bureau of Economics judged that the Reviews should be tested for a reasonable period so that problems with the techniques could be discerned and corrective action and/or modifications to the techniques and format could be developed. A regular reporting schedule for the pilot project was established and during the period new tools were added to the process, and supplemental research and review was conducted chiefly for the purpose of highlighting the economic and

policy implications of the economic review. Protected by confidentiality, these policy implications and recommendations have been offered by staff with openness and with the confidence that consideration and incisive evaluation of "sensitive" matters would not be reserved. Under such protective guidelines, results have been highly productive. The Commission has gained a custom designed background insight tool which would not be available under other disclosure guidelines. Sensitive matters such as financial weakness of segments of the industry, signals of potential service problems which might arise, evaluation of probable revenue shortfall, discussion of possible "disaster" scenarios and alternatives are, therefore, openly provided. After a year in test, the COR reports are now a regular part of the Bureau's mission. Just as in the case of most economic analyses, much of the basic information utilized in the COR reports is based upon information, statistics, and other sources which are available to the general public. However, the uniqueness with which they are assembled, integrated, related, and evaluated by the Bureau is the major strength of the COR reports. Moreover, this information gathering and evaluation are conducted within the special context of the Commission environment. It assumes that the recipient has intimate knowledge as only a Commissioner would have of internal Commission administrative functions, internal issues of special interest to the Commission and staff, and an understanding of the issues contained in current cases before the Commission. Such a specialized climate is atypical of any other environment in the transportation

field or in the economy. To another recipient, the views of the economist in relating with the Commission could be misconstrued, misunderstood, and misevaluated. Were others to have access to the information, it would be necessary to provide substantial additional background information to even begin to offer the review in anything approximating reasonable context. The effort now expended within the Bureau as largely an unfunded effort absorbed in the Bureau's budget would have to be expanded substantially and would place a huge new burden on the Bureau to provide background setting, editorial, and other major modifications of the effort. Moreover, the resulting exclusion of sensitive issues would cut out the heart of the Review and relegate it to little more than a summary report of published information.

As example, the Bureau of Economics has had no reluctance to discuss the questions of labor unrest and the underlying factors which may/will have impact upon such possible unrest, regardless of the fact that this Commission has no jurisdiction or other major responsibility for the labor area. That analysis is critical, however, so that the Commission may anticipate and fully understand questions involving carrier productivity, the need and basis for rate increases, and in order to anticipate carrier service difficulties caused by labor concern. As another example, based on the evaluation of carrier need to maintain and/or upgrade its physical plant, probable labor cost increases, inflationary trends, probable traffic gains for the future, and other factors, the Bureau has provided projections of probable rail carrier

industry revenue shortfall for the future and has even framed the projection in terms of the probable need for a specific general rate increase percentage in a particular time frame. Without intimate knowledge of the background and nature of the industry, rate increase procedure and associated other matters, the other-than-Commission reader could conclude that the Bureau (and, by reference, the Commission), well before the fact, had confirmed that railroads needed a general increase of a particular size and that railroads, in effect, would be guaranteed such an increase, when it was requested. Regardless of any reservations, guarded statements, explanations, and discussions, experience suggests that such a conclusion would be seized upon by those outside the Commission to the detriment of the transportation sector and the economy. This is regularly demonstrated elsewhere. The drama of a single index number (such as that relating to inflation, unemployment, gross national product) when published by Executive agencies often is seized upon by the unknowledgeable as an indicator for reaching a wide range of irrelevant, highly inappropriate conclusions.

A regulatory agency should not be placed in the position of being required to issue published reports on the future of the industry it regulates. The regulatory mission is based upon facts brought forward in cases at issue and/or policy direction founded upon representations which deal in-depth with the specific issues under scrutiny today. That is a massive task, as indicated by the huge workload of the Commission. The innovative but comparatively limited effort

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by the Bureau of Economics crosses these issues but only highlights them. However, an openly published Review based on a projection and "speculation" of the future can be viewed and seized upon as evidence of a Commission set scenario which the Commission uses to move forward in decisions to achieve a self-fulfilling prophecy. Nothing could be further from the truth but, to the extent that the projections are valid (and they have been highly so), such a construction of Commission actions will be inevitable. On the other hand, these reports dramatize the real need the agency has to employ the special and unique expertise of a skilled economic staff to conduct neutral, professional evaluations of the economy. It is clear that this includes the need to be aware of and to evaluate the economic implications the Commission's role may have for the industry in the future so that decisions can be made in context and with insight into the unique economic setting of the transportation industries.

Just as in the case of any investigative studies conducted in the legal framework, confidentiality must protect such reviews so that all issues can be addressed candidly, can be critiqued openly, and so that results, solutions, and alternatives can be offered regardless of their popularity or consequences.

Since we have been specifically requested to supply these reports by a Congressional Subcommittee with jurisdiction over certain of our activities, we are responding to that request by supplying the reports, which are attached.

Attachments

STAFF PAPER

PREPARED FOR

THE SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATION
OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES

Selected Views And Issues Related To Regulatory Reform In The Transportation Industry

By

Office of Program Analysis

of the

U.S. General Accounting Office

JAN. 21, 1976

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Contents

ABBREVIATIONS

CAA	Civil Aeronautics Administration
CAB	Civil Aeronautics Board
FMC	Federal Maritime Commission
GAO	General Accounting Office
IATA	International Air Transport Association
ICC	Interstate Commerce Commission

CHAPTER 1

INTRODUCTION

PURPOSE AND SCOPE

This study of transportation regulatory reform was prepared in response to a request from the Subcommittee on Oversight and Investigation, House Committee on Interstate and Foreign Commerce. The purpose of this study is to:

--State the views of individuals involved in different sectors of the transportation industry.

--Contrast these views with differing views within the industry, the historical development of regulation, and the general arguments for deregulation.

--Raise questions for discussion.

Three Federal agencies are involved in the direct economic regulation of transportation: the Federal Maritime Commission (FMC), the Civil Aeronautics Board (CAB), and the Interstate Commerce Commission (ICC). This report discusses all three agencies in terms of their regulatory impact on the surface, water, and air transport of passengers and goods.

Though the regulatory reform debate encompasses a broad spectrum on regulatory activities, this study is limited by request to a discussion of economic regulation of transportation.

The transportation regulatory debate of recent years has been largely stimulated by persons from both within and outside the industry who advocate major regulatory reform; in essence, deregulation. This position criticizes both the justification for and functioning of transportation regulation, relying on several prime arguments supported principally by economic analysis. To provide a balanced perspective for evaluating the views related in this study, some understanding of this position is necessary. For this reason, chapter 2 briefly analyzes these regulatory reform arguments.

The views within this study were obtained by interviews with approximately 20 individuals involved in various sectors of the transportation industry which are affected by one or more of the three transportation regulatory agencies.

The choice of interviewees was based on three criteria:

1. The individuals were knowledgeable of transportation and regulation and showed an interest through public testimony, through articles, or by participation in interest groups formed to affect transportation regulation.

2. The individuals were representatives of the major trade associations directly involved in one of the major regulated aspects of transportation.

3. Constraints on time and thus on travel made it necessary that most individuals contacted were in the Washington, D.C., area. However, several telephone interviews were conducted with persons outside the immediate area when it was believed they met the other criteria.

Two questions were asked in the interviews:

--What are your perceptions of the regulatory agency which affects your activities; i.e., is it serving a useful purpose and/or is it serving the purpose you feel it was intended to serve?

--What recommendations for change or maintenance of the status quo of the regulatory agency or its functions are desirable?

The interviewees can be classified into two basic categories. The first category, involving the majority of cases, consisted of representatives of special interest groups or trade associations. The second category consisted of knowledgeable individuals who, through their work as transportation lawyers, economists, etc., have gained considerable experience in transportation regulation.

The first category tried to express views representative of a significant portion of their membership. However, because these were consensus views, they cannot be considered inclusive of all members of the group.

The second category were contacted to elicit their personal points of view on regulation. Their suggestions are used largely within this report to clarify and add perspective to other positions as well as present some recommendations for possible change.

A complete listing of organizations and individuals interviewed is provided in appendix I and, whenever pertinent, identified within the body of the report.

Several interviewees discussed some aspects of total deregulation, and additional information was gathered from readings. As mentioned, most arguments for major regulatory reform are based on economic analysis. While the discussion of regulatory reform in chapter 2 cannot be considered representative of the entire school of economic thought concerning deregulation, it does in our judgment, contain the principal issues.

The study covers opinions on the three transportation regulatory bodies from the viewpoints of shippers or users, carriers, and other less easily defined interested parties. Therefore, the number of persons interviewed is not large enough, nor sufficiently random, to constitute a scientific or statistical sampling of the views and recommendations of all persons interested in transportation regulation. Nor can the opinions summarized below be considered an exhaustive list of all possible opinions of those in the industry.

The opinions herein are solely those of the associations or individuals represented and are neither conclusions nor recommendations of GAO or its staff. No attempt was made to verify the facts or motivations which led the interviewees to reach their conclusions and recommendations.

Chapter 2 discusses briefly the unique powers of a regulatory agency and the important arguments for major regulatory reform, or deregulation. Chapter 3 outlines the major perceptions of interviewees on the three regulatory agencies, while chapter 4 presents their recommendations for change. Chapter 5 summarizes the regulatory controversy to the extent it was addressed during the interview and raises some of the questions which are central to resolving that issue.

Appendix I, as mentioned, lists those organizations and individuals contacted. Appendix II outlines the evolution of the three transportation regulatory agencies. It seeks not only to identify when the Commissions were established and what regulatory powers were provided, but also to give the reader some brief understanding of the circumstances which led to the congressional decision to establish the agencies. Appendix III contains the specific details of the legislative evolution. Appendix IV briefly summarizes current regulatory reform activities within the transportation regulatory agencies and as proposed by the administration.

CHAPTER 2

OVERVIEW: THE REGULATORY REFORM DEBATE

This chapter provides an overview of some of the major factors of the current regulatory debate through:

--Providing a brief understanding of the uniqueness of a regulatory agency.

--Outlining some economic arguments which are the basis for most of the major regulatory reform 1/ positions in transportation.

--Presenting two primary approaches toward solving regulatory problems within a framework of major regulatory reform.

The perceptions and recommendations of the persons interviewed, which follow in chapters 3 and 4, should be viewed within this context.

These presentations are, of course, oversimplifications of the arguments for reform and the solutions available. However, they attempt to condense many diverse opinions on major transportation regulatory reform into the primary practical arguments and recommendations which are currently the basis for much of the reform debate.

THE REGULATORY AGENCY

Regulatory agencies are unique organizations in the U.S. Government. Each regulatory agency encompasses some elements of the powers of all three branches of government: legislative, judicial, and executive. Regulatory agencies are subject to less direct control and supervision than other Government agencies, primarily because of limitations on the President's power to remove regulatory officers. The Supreme Court affirmed this position in the Humphrey case 2/ where, invoking the separation of powers doctrine, it found that the President cannot remove officers who are not esentially executive and whose removal has been restricted by the Congress.

1/"Major regulatory reform" in this study refers to decreased economic regulation of transportation, often described simply as deregulation. There are, of course, philosophical and practical arguments for increasing regulation to the point of nationalization and/or strict regulation.

2/295 U.S. 602 (1935).

The Congress has traditionally attempted to establish legislation to regulate industries which either have monopolistic tendencies or provide services deemed essential to the public. Therefore, regulatory agencies, to a varying degree, have been empowered with control over entry and exit (through licensing); ratemaking; and some general business practices, such as consolidation, closures, issuances of stocks and bonds, and discriminatory or improper practices.

FMC, CAB, and ICC generally regulate the carriers of a particular mode. In several instances though, such as with freight forwarders, they regulate businesses not directly involved in carrying passengers or goods.

Chapter 3 briefly describes the major functions of each transportation regulatory agency. The specific economic regulatory agencies, along with major exceptions, are outlined in table 1 on the following page.

THE ARGUMENTS FOR MAJOR REGULATORY REFORM

Support for major modification of Federal transportation regulation, as generally stated, is normally founded in two, not necessarily separate, factors:

A political or social philosophy which advocates minimum government interference in economic matters.

Evidence of significant economic inefficiencies due to the presence of a regulatory structure.

The most practical arguments of those who advocate major regulatory reform in transportation rely primarily on economic analysis. Economic analysis, in the traditional sense, assumes regulation cannot substitute for competition and competition is the most efficient means of allocating resources. Therefore, this reasoning holds that there are two basic conditions where the economic regulation of transportation is justified:

Where the competitive process in a transportation mode or between modes cannot operate in a manner which will effectively allocate resources, such as:

--When there is monopolistic power.

--When there are very large capital investment requirements.

Table 1

Scope of Federal Economic Regulation of

Interstate Transport by Mode

Mode	Authorizing statute	Agency	Functions regulated								Exemptions
			Rates	Carrier agreements	Entry	Service	Exit	Merger	Finance	Reporting	
Railroads	IC Act, Part I	ICC	Max-min-precise	Permitted	PCN 1/	Car service only	PCN, 1/ train discontinued	Controlled	Controlled	Specified	None
Motor trucks	IC Act, Part II	ICC	Do	Do	PCN, 1/ permit	Not controlled	PCN 1/	Do	Do	Do	Agricultural commodities, local transport
Buses	IC Act, Part III	ICC	Do	Do	PCN 1/	Do	Do	Do	Do	Do	None
Domestic water carriers	IC Act, Part III	ICC	Do	Do	PCN, 1/ permit	Do	Do	Do	Do	Do	Bulk commodities
Surface freight forwarders	IC Act, Part IV	ICC	Do	Do	Permit	Do	Not controlled	Do	Do	Do	Shipper associations, minor carrier groups
Petroleum pipelines	IC Act, Part I	ICC	Do	Do	Not controlled	Do	Do	Not controlled	Do	Do	None
Air carriers: Domestic	FA Act	CAB	Do	Not permitted	PCN 1/	Little control	PCN 1/	Controlled	Do	Do	Air taxi, agricultural commodities
International	FA Act	CAB	Not directly controlled	IATA agreement	PCN, 1/ Presidential approval	Bilateral agraements	Do	Do	Do	Do	None
Air freight forwarders	FA Act	CAB	Discrimination only	Not permitted	Operating authority	Not controlled	Not controlled	Do	Do	Do	Do
Noncontiguous maritime	Merchant Marine Act 1933	FMC	Max-min-precise	Permitted (limited)	Not controlled	Do	Do	Not controlled	Not controlled	Do	Nonliner services
International maritime	Merchant Marine Act 1916	FMC	Not directly controlled	Permitted	Do	Do	Do	Do	Do	Do	Do
Maritime freight forwarders	Merchant Marine Act 1916	FMC	Do	Do	Licensed	Little controlled	Do	Do	Do	None	None

1/PCN indicates Certificate of Public Convenience and Necessity.

Source: U.S. Department of Transportation, National Transportation Report, 1972, p. 35.

--When two competing systems are not feasible.

--When market powers are such that competition is hindered.

--When the Government decides a noneconomic service should be provided.

Where the economic benefits of the regulatory process imposed upon the mode are maximized in relation to economic cost.

Even if economic regulation is justified by the first condition, the practical effect of the regulatory structure imposed upon the industry must not only have demonstrable benefit, but should maximize economic benefits and minimize economic cost. Sometimes this benefit may be only a reduction of economic waste; i.e., the cost of regulation is less than the cost of letting the system operate without regulation.

Three major supporting arguments are commonly put forth by those who want major regulatory reform; the arguments address the controversy at a practical level where these views are easily understood and applied.

Economic regulation as practiced in the United States today is counterproductive and costly to society.

Conditions within the transportation industry have changed significantly since the initiation of economic regulation, and today's industry, if left alone, would be largely competitive.

The perpetuation of transportation regulatory agencies is due largely to vested interest in the present regulatory structure.

The bases for these positions are briefly outlined below.

Economic regulation is counterproductive.

The support for the position that today's economic regulation of transportation creates waste arises from numerous economic studies, some claiming tremendous amounts of waste while others, in differing modes, concluding lesser but still significant amounts of misallocated resources. For example, James C. Nelson states in "The Changing Economic Case for Surface Regulation" that economic studies have found "* * * up to $10 billion

each year is wastefully spent on freight transportation services because of misallocation of resources heavily influenced by ICC regulation." 1/ Similarly, in the case of CAB, Arthur S. DeVany in "Is Efficient Regulation of Air Transportation Possible"? estimates the waste in 10 competitive air travel markets amounts to $2.3 million per year. 2/

In addition, several "real world" examples are often cited by deregulation advocates as illustrative of the cost of economic regulation. In the area of air transport, for example, Pacific Southwest Airways and Southwest Airways, both intrastate (and thus non-CAB-regulated) airlines, have historically had lower fares then competing interstate (CAB-regulated) carriers. Also cited are the European charter airlines and their low fare structures. Similarly, for purposes of comparison, some ICC motor carrier and rail regulation is often related to the totally or partially deregulated motor carrier and/or rail industries of Canada, Great Britian, and Australia. These examples are claimed by those who seek major regulatory reform as not only showing possible cost savings from less regulation, but also industry stability, an important factor in considering the next argument.

The industry has changed since regulation began.

Analyses of the development of economic regulation in transportation by many economists, such as Nelson and Thomas Gale Moore, have gone into great detail to show why regulation was established, how the conditions have changed, and how continued regulation creates economic waste. ICC, where regulatory authority deals with several different modes, is said to be most evident. The premise is that the majority of regulation was established to cope with railroad problems of past eras and has little relation to today's competitive conditions. The regulatory agency has responded to changing conditions with more regulation. For example, Moore states, "The only

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1/Nelson, James C. "The Changing Economic Case for Surface Transportation Regulation," Perspectives on Federal Transportation Policy, American Enterprise Institute, 1975, p. 20.

2/DeVany, Arthur S., "Is Efficient Regulation of Air Transportation Possible?" Perspectives on Federal Transportation Policy, American Enterprise Institute, 1975, p. 89.

justification ever given for regulating freight forwarders was that they were conspiring with the railroads to erode ICC-approved railroad rates." 1/

Similarly, it is argued that there is no economic justification for the continued economic regulation of air transport since it is now a mature and naturally competitive industry. Regulation is said to induce additional economic cost and promote substantial inefficiencies. The prime inefficiency being the lack of price competition and the limitation of market competition to the area of service quality, mainly flight frequency and inflight service.

Vested interest helps perpetuate regulation.

This argument holds that the perpetuation of transportation regulation is due largely to the existence of vested interest. It maintains that initially the Congress felt that economic regulation was the only way to control railroads and then, gradually, other transportation industries. As time passed these regulated industries, in league with the regulatory agencies, have tried to solve every arising problem with increased regulation. Those who give this argument analyze the positions of interested parties in terms of the parties' motivations to maintain the status quo. These motivations include the capital investment of the scheduled air carriers, the special and high-priced knowledge of the industrial traffic managers, the interests of transportation lawyers and lobbyists who earn their fees because of the system, and many others. The regulatory system, it is claimed, allowed them to develop a protected and economically rewarding niche within the regulatory structure, and deregulation would destroy that protection and cause them to incur real economic loss.

RECOMMENDATIONS FOR MAJOR REGULATORY REFORM

The recommended solutions to the problems of unjustified regulation of transportation, as made by those who seek major regulatory reform, regardless of whether it is unwarranted or inefficient, are divided into two approaches:

1/Moore, Thomas Gale, Freight Transportation Regulation, American Enterprise Institute, Washington, D.C., 1972, p. 90.

Reform the current regulatory structure to provide for more efficient regulatory agencies, modifying both the scope of authority and the process. Eliminate as much authority as practically and/or politically feasible.

Eliminate as much regulatory authority as can be accomplished with a goal of achieving total deregulation.

Though these recommendations are obviously not mutually exclusive, it is desirable to discuss them separately to retain and emphasize their distinct characteristics. Also, because these are not across-the-board recommendations, emphasis would vary with application to the particular transportation agency addressed.

Regulatory reform within the system

The recommendations for reforming the system, though overlapping with some industry recommendations, go a step beyond what most people in the industry would recommend when they speak of regulatory reform. Yet these reform positions do not really call for total deregulation. Instead of modifying the present system on a patchwork basis as those in the transportation industry appear inclined to do, these proposals involved a review of the whole foundation for, and objectives of, transportation regulation to develop fundamental structural reform of the system.

Some exemplary recommendations are summarized below.

Existing regulatory and judicial functions should be separated.

--The regulatory functions (administration of regulation), must be separated from the judicial (hearing) function. An impartial judge cannot be a policymaker at the same time.

--Policy and administration should be handled by one commissioner, probably the chairman, and staff. Other commissioners should serve as judges.

The agencies should modernize their case procedures.

--Everything is handled on a case-by-case basis. This should be changed to management by exception.

--Most routine matters could be handled by rulemaking. Then only the exceptions would need adjudication.

--Introduce more modern management techniques.

Rationalize the responsibilities of regulatory agencies.

--Separate promotional responsibilities from regulatory responsibilities.

--Eliminate overlapping responsibilities of regulatory agencies.

--Logically structure the responsibilities of agencies and reduce segmentation of responsibilities.

Many of these suggestions have been made in whole or in part in reports, such as the report of the Ash Council, 1/ the Hector Report, 2/ the Landis Report. 3/ These reports date from the 1960s, but most of what they recommend has yet to be adopted.

Total deregulation of transportation

The recommendation for total deregulation of transportation generally means the deregulation of entry, exit, and prices. Regulations such as safety standards and certification are considered important and beneficial and they would not be changed. However, some practical and procedural considerations to instituting deregulation would have to be met. Primary emphasis is most often placed on the following areas.

Strengthen antitrust laws and enforcement.

Those advocating total deregulation feel that competition will give the users of transportation an adequate level of service and protection against discrimination. The way to maintain healthy competition is to strengthen antitrust laws and enforcement.

1/President's Advisory Council on Executive Organization, A New Regulatory Framework (the Ash Council) 1971.

2/"Problems of the CAB and the Independent Regulatory Commissions." September 10, 1969, Louis Hector.

3/"A Report on Regulatory Agencies to the President-elect." December 1960, James M. Landis.

Provide for political and practical considerations during any implementation of deregulation, including providing direct or offsetting subsidies to compensate for the economic dislocations which might occur.

Most deregulation advocates recognize that changes in the status quo will produce disruptions and must take account of the current political and economic situation. Examples of their serious considerations of the matter are Moore's conclusion that "some minimal regulation may be * * * justified on economic grounds," 1/ and Edwin M. Zimmerman's notes on the political realities of deregulation:

> "Other considerations undoubtedly help make legislators wary of deregulation. Dislocation of the existing commitments and expectations based on present regulation would be costly to those affected. Deregulation would also disturb the cross-subsidization and the redistribution of income that often accompany regulation. It may appropriately be argued that such functions are incidental to the legitimate purpose of regulation, and that, if desirable, they should be separately articulated and evaluated by the legislature. Nevertheless, since the decision to deregulate may in fact affect such functions, those consequences make the decision that much harder to reach." 2/

These suggestions would emphasize assuring that the regulation necessary for adjustment is minimized and that the economic dislocations which occur are confronted directly. Interim regulations required to provide a stable transfer should be recognized as temporary, and those permanent regulations which are required should be held to an absolute minimum. Economic dislocations are better handled through a subsidy which is recognized as such and is thus controllable. Precedents exist, such as the Trade Act of 1972, which indicate the preferred way to deal with such dislocations.

1/Moore, Thomas Gale, "Deregulation Surface Freight Transportation," Promoting Competition in Regulated Markets, Brookings Institution, 1975, p. 93.

2/Zimmerman, Edwin M., "The Legal Framework of Competitive Policies Toward Regulated Industries," Promoting Competition in Regulated Markets, Brookings Institution, 1975, pp. 374 and 375.

CHAPTER 3

SELECTED PERCEPTIONS OF REGULATORY AGENCIES

This chapter attempts to describe the three transportation regulatory agencies as viewed by the interviewees. They were asked:

> "Do you believe the agencies to be serving the function which they were established to perform or a necessary function, and if so, are they performing adequately and effectively?"

Though separating the views of those interviewed from their recommendations is somewhat artificial, we did this to provide some insight into the interviewees' attitudes concerning the necessity for transportation regulation.

The perceptions are presented as they relate to each agency and transportation mode. More understanding of the reasoning behind these views and their implications for regulatory reform emerge in chapter 4 where the interviewees' specific recommendations for changing the regulatory structure are related.

THE INTERSTATE COMMERCE COMMISSION

ICC, the oldest and most complicated of the regulatory agencies, was established in the late 1800s to regulate railroads, primarily to control discriminatory rates and practices. ICC now has certain regulatory powers over numerous aspects of all surface modes (railroads, motor carriers, and domestic water carriers), as well as certain freight forwarders. 1/

About the same regulatory procedures and controls are applied to each transportation mode. A carrier's rates, charges, and practices must be just and reasonable, and unlawful preference or prejudice is prohibited. In most instances ICC has authority over maximum, minimum, and exact rates; controls entry into service through either permits or requirements for a certificate of public convenience and necessity; controls service exit; controls mergers; and controls certain financial transactions. The exceptions to ICC regulations are mostly in the areas of agriculture, bulk

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1/ICC also regulates petroleum pipelines, a mode of transportation not covered in this report.

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commodities, and private carriers. 1/ Appendix II contains additional information on ICC's exact authority.

The degree of control over different modes varies considerably. In terms of ton-miles railroad traffic is completely within ICC jurisdiction. On the other hand, only around one-half of motor carrier traffic and about 10 percent of the inland water traffic is regulated. 2/ Therefore, the agency's impact within each method of transportation, and upon the users and providers of each mode, differs considerably. This difference is partially reflected in the interviewees' comments.

General perceptions of ICC

Most of those interviewed held several basic views of the general regulatory functions of ICC.

ICC is performing a needed function and it, or a similar agency, should continue to exist.

The agency performs certain necessary roles as it is currently structured. Even with less regulation, it would have to perform similar functions to maintain a sound transportation system. The following were expressed as the two major benefits of ICC's activities:

--ICC provides stability in rates and service which otherwise would not exist.

--It protects the shipper from unjust discrimination and the carrier from destructive competition.

There was no consensus as to the exact role that ICC should be performing in transportation regulation.

Practically all those interviewed who deal with the ICC-regulated modes feel that ICC has a duty to "promote the public interest." But due to the vagueness of the term, most people interviewed tend to define "public interest" in terms of their own interest. Those speaking

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1/Private carriers are all carriers, except common carriers, and include both those owned by individuals and companies.

2/Thomas Gale Moore, Freight Transportation Regulation, American Enterprise Institute, Washington, D.C., 1972, pp. 27 and 32.

from a railroad's viewpoint feel it is ICC's duty to maintain a better railroad system. Those addressing the problem from a shipper's viewpoint believe that at least part of ICC's job is to protect and promote those who ship freight. The private freight consolidators, a group of private firms which consolidate their own shipments on a cooperative basis to take advantage of full car/truckload rates, see ICC as protecting the regulated freight forwarders to the detriment of their own efforts.

ICC is operating within the law but the current laws are outdated.

This comment, repeated in one form or another in several interviews, indicates that the problems some shippers and carriers experience in dealing with ICC are sometimes perceived to be founded on something more fundamental than ICC's operational techniques. Several comments exemplify their expression of the problem.

--ICC is not facing the reality of the current situation, telling the Congress what it cannot do under the current legal mandate and asking the Congress for the needed changes.

--ICC is forced to operate under outdated laws and regulate a transportation system significantly different from that which it was established to deal with.

The problem of outdated legislation is addressed indirectly by many of the recommendations in chapter 3, but more often than not, the interviewees were not explicit about the general changes desired. The implication is that regulatory agencies were established to deal with (1) strong railroads possessing monopolistic tendencies, (2) ocean transportation which was of major international importance, or (3) an infant airline industry. Currently, they are not faced with the same challenges and problems. These changes should be evaluated and the legislation altered appropriately.

ICC has several major operational problems and few of those interviewed are content with current operational procedures or attitudes.

There are significant and often repeated criticisms from interviewees who work with ICC regularly that concern difficulties with the current regulatory procedures.

--Too much timelag in making decisions, particularly on rates, entry and exit, and mergers.

--A lack of competence among the Commissioners.

--A Commission concentration on the problems and welfare of the carriers and a lack of concern for "getting the goods to the market."

--The stifling of competition and taking of actions which discourage change.

Of those interviewed, the two who spoke for trucking groups expressed, both in interviews and in written statements, the most content with the current ICC regulatory framework.

Perceptions of ICC's impact on rail transportation

The most specific complaints of those interviewed on ICC practices which affect rail transport emanated from the Association of American Railroads. Its more important comments were normally reiterated by at least one or two other interviewees, including some shippers directly involved in rail transport.

Railroads are treated ineguitably compared with other transportation modes.

Because railroad traffic is 100 percent regulated versus about 40 percent for trucks and 10 percent for inland water carriers, it suffers from unegual regulatory control which creates unfair competitive restraints.

The lack of freedom to adjust rates and services, largely caused by delays in decisionmaking and ICC's advocation of the status quo, stifles innovation.

The American Short Line Railroad Association, while not disagreeing with the problems of delay, takes issue with the allegation that ICC stifles innovation. The Short Lines' experience indicates this is a false issue.

On a more specific aspect of rate problems, several parties who deal with the railroads as shippers were particularly disturbed by the "closed door" railroad rate bureau activities and the apparent lack of ICC control over rate bureaus. They feel ICC is not sensitive to, or responsive to, the shipper's needs.

ICC is partially responsible for the failure of the northeast rail system.

The composite view of persons interviewed who stated this opinion based it on their experience with ICC's delayed decisions or total lack of decisions, together with a failure to deeply examine the real problems before making a decision.

Perceptions of ICC's motor carrier regulation

Both the motor carrier representatives interviewed and those interviewees involved in shipping regulated goods via truck expressed largely similar perceptions of ICC's efforts in regulating common motor carriers. These are similar to the general perceptions listed previously and can be summarized in one statement.

ICC is a needed and effective organization in that it brings stability of rates and services to the industry.

The only major qualification came from some of those interviewed who represent shippers. While concurring with the general thrust of the statement, they still see in ICC a lack of concern for the problems of, and/or a lack of desire for the promotion of, motor freight shipping.

The Committee on Modern and Efficient Transportation 1/ consists of a small group of large corporations which use a large amount of motor carrier and rail shipping, including their own fleets, and a trade association. The group aims to modernize economic regulation of surface transportation. This group has specific suggestions for regulatory reform which are included along with other recommendations in chapter 4. It generally perceives ICC as too restrictive in terms of rates and entry and too protective of rate bureaus, both trucking and railroad.

ICC's perceived impacts on water carriers

Those interviewed offered few perceptions regarding ICC's impacts on interstate water carriage, primarily due to the limited ton-miles of shipping which are regulated (approximately 10 percent). Only the water carrier representatives

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1/The Committee members are: Quaker Oats, Sears, Dow, Carnation, General Mills, the National Association of Food Chains, American Paper, DuPont, Whirlpool, and Union Carbide.

and representatives of the railroads related significant opinions. These tended to be opposing opinions; primary interest centered around increasing or decreasing water carrier regulation. Interviewees associated with water carriers expressed the following views.

Water carriers do not want increased regulation. The problems are not with the water carriers and the solutions are not increased regulation.

--ICC protects railroad interest.

--ICC allows the railroads to act in a manner which stifles competition.

--Stronger antitrust laws would allow more competition without increased regulation.

As mentioned, those interviewed who spoke for the railroads see ICC's role in rail-water competition as discriminatory, due to the complete regulation of railroads and the lack of barge regulation. They do not feel favored by ICC and advocate increased water carrier regulation.

THE FEDERAL MARITIME COMMISSION

FMC has regulatory authority over common carriers engaged in the waterborne foreign commerce of the United States. The Commission's primary regulatory impact is through its authority over steamship conferences 1/ which, once approved by FMC, are exempt from antitrust laws. FMC can regulate rates, charges, classifications, etc., established by these conferences as well as certain services, practices, and agreements of and between common carriers.

The Commission possesses some authority over domestic waterborne commerce which is carried on the "high seas" and certain authority over ocean freight forwarders. A more complete description of FMC regulatory authority is contained in appendix II.

Perceptions of FMC

Research limitations for this paper resulted in only one interview expressing significant interest in ocean carriers'

1/A steamship conference is a cartel-like arrangement between a group of common carrier steamship lines for controlling rates and conditions of moving cargo in a "trade," i.e., a special geographic area.

problems. This was the American Institute of Merchant Shipping, a representative of the ocean carrier industry. The shipper representatives viewed ocean shipping as a minor part of their transportation budget; their major concerns were the domestic freight situation where most of their normal shipping dollar is spent. Therefore, they expressed few opinions as to FMC's regulatory effects. The following perceptions and supporting arguments are a mix of these views and, though different points were sometimes emphasized, the perceptions were largely parallel.

FMC lacks real effective authority to regulate ocean shipping and has little impact on ocean transport.

The two major reasons for this are:

--The complexity of international shipping, due largely to the political implications of foreign maritime competition.

--The inability of any nation to exercise legal jurisdiction over foreign shipping conferences or foreign vessels.

More specifically, those interviewed offer the following additional views which often parallel attitudes expressed by other interviewees concerning ICC.

--FMC is not sufficiently effective or aggressive, and provides no real rate stability.

--The agency is impotent, because (1) the law is defective, not giving FMC the powers it needs to carry out its mission and (2) FMC does not have competent personnel.

--FMC acts as a minimum stabilizing force just through its existence (or threat of possible action) and serves as a forum for shipper complaints. There is a need for it or a similar agency to continue to perform this function.

THE CIVIL AERONAUTICS BOARD

Economic regulation of the air transport of goods and passengers by common carriers in the United States is controlled by CAB. It regulates entry into or exit from common carrier transport, routes traveled, and rates charged for carrying passengers and goods. There have been many changes in the names of the agencies which have been responsible for

economic regulation of air transport since it began; however, the basic regulatory authority of the agency has remained unchanged. Appendix II contains more details on the development of CAB and its regulatory authority.

The public has been most affected by and most interested in air passenger travel, while largely ignoring air freight. The perceptions of CAB by some of those involved in air transport reflect this image.

Perceptions of CAB's effects on air transport

Those interviewed who are involved in the air transport industry all maintained one perception.

> Total deregulation of the air transport industry is undesirable. Regulation is necessary to provide the stability required for a viable industry.

However, the interviewees generally agreed on another point.

> CAB is not doing a totally objective or competent job of regulating.

Here much of the similarity of viewpoints ends as with more detailed analyses, each interviewee tended to address the functioning of CAB from his or her own operational perspective.

Representatives of the Air Transport Association (the scheduled carriers) said:

--CAB is working well. There is no major problem with the basic legislation. The agency has provided the United States with a safe, high quality, low-priced, and technically advanced air transport system.

--The primary problems are with the attitudes of CAB's administration.

--There is overregulation, but it comes mainly from the Department of Transportation and other Federal agencies, generally not CAB.

Those interviewed who spoke from the nonscheduled carriers viewpoint said there is overregulation and significant regulatory reform is needed, but feel it is CAB that overregulates.

Shippers of air cargo, as represented by those interviewed, see CAB as serving its purpose well and suggest it should remain much as it is. The National Industrial Traffic League would support air cargo rate bureaus similar to railroad rate bureaus. The Air Freight Forwarders Association disagree, seeing CAB as ignoring air cargo in general and air freight forwarders in particular. They blame this on CAB's preoccupation with passenger traffic and argue that with cargo now an increasingly important part of airline revenues, the Board's attitude should change.

Other individuals interviewed represented viewpoints which could be termed the "general public perspective" in that they advocate positions seen as being beneficial to the public who do not significantly use air transport, due to high cost.

The individuals who represent the public perspective advocate regulatory change which could provide a wider range of air services, in particular more group charters than currently available. In summary, their perspectives are:

--CAB is not responsive to passenger (in the broadest sense) needs.

--The Board has concentrated on keeping the scheduled carriers in business, perhaps to the detriment of general air travel.

--More competition is the natural solution to the current stifling regulatory situation.

Taking exception to much of this "passenger viewpoint" is the position stated by an interviewee at the National Passenger Traffic Association, a representative of the business traveler. The businessman, although feeling discriminated against by the present fare structure and an inability to take advantage of special tariffs, feels he has more to lose through changes in the current system (loss of flight frequency, frills, etc.) than could be gained through regulatory reform.

CHAPTER 4

RECOMMENDATIONS FOR CHANGE

Numerous recommendations for change have been made by the parties interviewed in connection with this project. This chapter describes these proposals as they relate to each regulatory agency and transportation mode.

THE INTERSTATE COMMERCE COMMISSION

Throughout most of the interviews concerning ICC, several general difficulties were reiterated which appear to be very basic problems within the regulatory system. These are listed below along with one or more of the proposals.

The slowness of regulatory action and excess timelag of ICC decisions.

--Eliminate rate suspensions.

--Put a time limit on decisions, with automatic enactment of carrier request if no action occurs. This relates to all matters, including rates and mergers.

--Change formal procedures to require less time and effort.

The lack of knowledgeable people on the Commission and the prevalence of a poor attitude.

--Give the Commission a real job to perform (i.e., concentrate efforts on a more meaningfull role and do away with many minor tasks), and it will draw the needed talent.

--Cut the size of the commission down to five or even three, Commissioners.

--Assign the proper people to the right case to utilize their knowledge and experience.

The Commission stifles initiative and innovation.

--Allow more innovation and experimentation with rates and services.

--Give more freedom to adjust rates promptly.

--Generally reduce regulation to allow increased competition and flexibility.

These concerns are noted more specifically, as they might apply to individual modes, in the following discussion.

Recommended changes in ICC's regulation of railroads

As represented by those interviewed, the railroads' primary concerns appear to be increased profitability and service adjustments, primarily abandonments and rate flexibility.

The railroads must be allowed adequate revenues for a reasonable profit.

Representatives for the Association of American Railroads, in both testimony and during the interview, clearly expressed that the railroads are not allowed adequate revenues to provide reasonable profits. They identified causes attributable to the regulatory problems of rate suspensions and slow ICC decisions. Railroads need freedom to make immediate rate increases based on increased cost.

The representatives interviewed from the American Short Line Railroad Association take exception to this position, saying that increases are basically automatic. They do agree that delay in approval adversely affects revenues.

Increase railroad competitive flexibility through reduced regulation particularly in terms of rate adjustments.

Most of those interviewed who are directly involved in rail transport support some form of rate flexibility and more freedom in allowing the railroads to try innovative services. There were two exceptions:

1. This proposal is opposed by interviewees who assessed the possibility of rate flexibility from the viewpoint of the shippers or competitors (water or motor carriage). The shippers feel that they have some "prior protection" (no rate changes without

approval procedures) under the current system, while the competitors express concerns over discriminatory rates and destructive competitive practices.

2. The Short Line Railroads' representatives feel that the complaints of an inability to innovate is a "red herring." They feel ICC does take adequate action on innovative suggestions within a reasonable time.

Those interviewed who represent shippers support more innovative services. Furthermore, the railroad-connected individuals, along with several other interviewees, generally feel that the only real protection the shipper needs is protection from rate discrimination.

Related to the question of flexible rates are the operations of railroad rate bureaus and similar bureaus within the trucking industry. According to the interviewees, the bureaus are highly secretive in their meetings and in reaching their decisions.

Railroads, as represented by those interviewed, are happy with the current environment of limited public access and strict limits on the actions of bureau members. However, the interviewees who view the situation from the standpoint of shippers strongly object to the rate bureaus' current method of operation. The shippers recommend more access to bureau proceedings and more independent carrier action, particularly in terms of single carrier rates.

Restructure the railroads and allow more entry/exit freedom, particularly more rail abandonments.

Every individual interviewed who voiced an opinion on the current problems of the railroads was explicit on his interest in seeing that the railroads remain in private hands and not become a ward of the Government. Included were those who represented the railroads' competitors. Water and motor carriers favor private ownership, not because an unhealthy railroad might be weaker competition, but because of their need for an efficient interface with the rail system. They believe this can be better accomplished with the railroads in private hands.

A closely related issue is rail abandonments. Interviewees from railroad groups support easier rail abandonments as do those who represent the other, more general transportation interest groups. Furthermore, these individuals saw no reason why railroads should not be allowed to substitute motor carrier service with railroad ownership of the truck lines if necessary, for such abandonments. Motor carrier interests were, of course, an exception to the railroad ownership provisions.

Those representing shippers and motor carriers did not relate a viewpoint about rail abandonments. However, several interest groups in areas where major abandonments are a probability have given considerable congressional testimony on the matter. The Railroad Task Force for the Northeast Region, Inc., the American Farm Bureau Federation, and the New York Pennsylvania Shippers Association, Inc., are examples. 1/

These groups are concerned with losing service during a railroad reorganization, due partially to abandonments and partially to the overwhelming of local rail carriers, by a massive regional rail reorganization. They recommend additional consideration of local problems and of the effects on local carriers, both in the Congress and ICC, during the decisionmaking process.

There were no recommendations to fully deregulate or abolish ICC control over rail transport.

While there was much interest in increasing regulatory flexibility, none of those interviewed (including the railroads' representatives), recommended full deregulation of railroads. Those speaking from a water

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1/Campbell, Hugh L. III, New York Pennsylvania Shippers Association Inc. & Can Do, Inc., before the House Committee on Interstate and Foreign Commerce, Subcommittee on Transportation and Commerce, July 22, 1975.

Ehst, Richard A., President and Chairman of the Board, Railroad Task Force for Northeast Region, Inc., before the House Committee on Interstate and Foreign Commerce Subcommittee on Transportation and Commerce, July 22, 1975.

Fields, C. H., Assistant Director, Congressional Relations, "The Transportation Subcommittee of the House Committee on Interstate and Foreign Commerce, July 27, 1975.

carriers' viewpoint feel that ICC is already to amenable to the railroads, allowing so much latitude that rail companies can now frustrate the coordination of rail and water service.

Recommendations regarding ICC regulation of motor carriers

The recommendations of those interviewed for altering ICC's regulation of trucking are few and, in most cases, would not significantly alter the trucking industry.

Do not greatly alter ICC or its regulatory authority over the motor carrier industry.

The interviewees who addressed regulation from the position of motor carriers, both common and private, voiced no desire to greatly change ICC's regulatory structure. The interviewees, who reflect mainly the common motor carriers, recommend leaving the system unaltered since it provides a stability in both rates and service which shippers need.

The private motor carriers recommend changes in regulation to allow the trucking fleets of subsidiaries to be used as part of the fleet of a parent company, thus eliminating the restrictions on the products which subsidiaries may haul for a parent company, and vice versa.

Furthermore, these individuals view empty backhauls 1/ as a problem, while common-carrier-oriented interviewees did not, and would like more ICC effort to eliminate them.

1/Legal restrictions on common motor carriers (as to commodities and routes), plus private and agricultural motor carrier (as to solicitation of commercial traffic), create numerous return trips (backhauls) from the delivery point, during which the motor carrier travels without cargo. Consequently, the carrier earns no revenue on the return trip and must apportion the round trip cost to the initial cargo load. In addition, often another carrier is traveling the reverse route with the same problem. Therefore, sometimes two carriers each make a trip where a single trip by one carrier would have been adequate to carry the same amount of cargo.

Several other interviewed individuals who spoke from the shippers' or competitors' viewpoint made recommendations which could cause major changes in the motor carrier regulatory system.

Reform the rate bureau system to allow shippers to deal with common carriers in an open and businesslike basis, plus have less secrecy and more ICC supervision of rate bureau activities.

Eliminate the entry/exit requirements for trucking.

The latter recommendation was made by a former ICC official as a reform to speed up ICC decisionmaking. He stated that ICC now spends about 85 percent of its time on motor carrier applications, some of which are in consideration for 2 or more years. Eliminating this workload would speed up other, more complicated decisions and allow more important decisions more careful consideration.

Recommendations concerning ICC regulation of water carriers

ICC regulates only a small percentage of inland and coastal water traffic, primarily because of the bulk commodity exemptions. Those interviewed, other than individuals who spoke from their direct connection with water carriers, had few recommendations or comments on regulated inland water traffic. Most of these have been related at previous points in the report. To briefly recap:

Federal subsidization of inland waterways provides an unfair competitive advantage to water traffic over railroads.

More coordination shold be achieved between the modes and the agencies which regulate the separate modes (CAB, ICC, FMC).

The introduction of flexibility into rail rates is effective deregulation of railroads and will lead to destructive competition between rail and water carriers.

The most substantive recommendations on water carriage which emerged from those interviewed were made by individuals associated with the Water Transport Association. These are aimed largely at meeting competitive problems with the railroads and are mostly self-explanatory.

Oppose railroad ownership of barge lines, particularly where railroad and water transport are in competition.

Require railroads to make intermodal services available for water carriers. Railroads are inclined to protect the all-rail shipping alternative to the detriment of intermodal carriage.

Prohibit geographic discrimination (selective pricing) by railroads and "sharpshooting" (selective discriminatory pricing) aimed at destroying water competition on specific routes.

Provide for specified punitive damages similar to those of antitrust, as a deterent to suppression of competition. Presently, a case goes into a long period of litigation, perhaps as much as 10 years, and if won there is no award to the winner nor penalty against the loser.

Control the destructive competitive effects on common water carriers by the private barge (for hire) operations so that both private and common operators are treated equitably.

THE FEDERAL MARITIME COMMISSION

Ocean carriers do not compete with the major portions of the other, mostly inland, modes under discussion and thus, the few recommendations for change came primarily from individuals at the American Institute of Merchant Shipping. Other interviewees had too little contact with the Maritime Commission or its policies to make specific recommendations.

The Federal laws on maritime regulation are defective. They are trying to regulate a transportation system on an international scale and too many factors are not within the control of a U.S. Government agency. They should be changed to reflect this fact.

One suggestion was that an organization be established similar to the International Air Transport Association (IATA), the international air carriers' conference.

The Federal agency which has real power over international merchant shipping is the Department of State. To have effective regulation, there should be more cooperation and coordination between the Departments of State and Justice and FMC in diagnosing and solving maritime problems.

FMC, to be effective, must have the power to control certain activities of foreign flag carriers, particularly those of third countries who enter U.S. trade.

The interviewees stated that the real power controlling maritime industry activities, often to the detriment of better business practices, is the Department of State, where political considerations are paramount. The Commission does have some regulatory controls, but these are of an "all or nothing" nature which results in a reluctance to use them. In other cases, as with the continued existence of rebates (which are illegal), there is a lack of initiative and competence by the Commission staff. Nevertheless, it is felt that a regulatory body such as FMC is needed to act as a restraining influence on carriers and provide a forum for airing shipper grievances.

THE CIVIL AERONAUTICS BOARD

Throughout the growth of the airline industry in the United States, passenger traffic has been the backbone of the air transport industry and thus the major area of regulatory concern. However, in recent years, air freight has become an increasingly important part of the revenues earned by air carriers. In addition, there has been some dissatisfaction with the limited types of passenger service (mostly high quality and regularly scheduled), available to the public. The comments below largely reflect the current debate over these two topics.

Recommendations--CAB and the air passenger

According to those interviewed, the dispute within the industry concerning air passenger travel centers largely around two positions, those who basically want to maintain the status quo and those who want to bring low cost, charter-type travel to air transportation. Representatives of the former group presented the views of the scheduled carriers and the business traveler. Advocates of the latter spoke for the nonscheduled airlines and some public interest groups. To a similar degree, these groups are again divided in their

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assessment of the usefulness of CAB and though only a few interviewees recommended total deregulation, all agreed on one point.

The air transportation regulatory system is unsatisfactory and must be improved.

The source and degree of discontent among interviewees was clearly varied. Those interviewed at the Air Transport Association made these recommendations:

--Do not make major or abrupt changes in the system. In particular, do not open the system to free entry and exit or the scheduled carrier system will be destroyed.

--The extremely burdensome CAB bureaucracy with its very costly reporting requirements should be modified.

--Solve regulatory delay problems. The delay in adjusting rates is very costly, particularly as it effects revenues during times of rapid changes in airline cost.

--The tariff system is much too complicated and should be simplified for the good of both the carriers and the public.

--There should be less noneconomic regulation. The industry is overregulated with health, labor, and certain other requirements. Safety regulation remains of prime importance and should not be weakened.

Those interviewed who represented the nonscheduled carriers, the National Air Carriers Association, wanted to increase their ability to compete with scheduled carriers and recommended these actions:

--Reduce economic regulation. Many of the current regulations are to the detriment of the consumer.

--Revise CAB procedures to decrease the time and cost of filings and hearings,

--Increase competition, particularly in the area of rates. Reduce restrictions on the charter industry and allow more innovation in providing service.

--The airlines need more cooperation and support from CAB relative to international competition.

--Eliminate the prohibition against individual ticketing by charter carriers. The need to use agents increases the cost to the customer.

--Permit dual certification of charter carriers (both scheduled and nonscheduled service).

--Take away CAB's power to prescribe rates, both domestic and overseas.

Representatives of consumer groups, while pressuring for an increase in low cost air travel, are not specific in their reform recommendations. They want the airlines to increase low cost charters and would like CAB to permit greater services and rate flexibility. Though CAB is making some reform efforts in this area, these groups feel that legislation is necessary to bring real change.

The Aviation Consumer Action Project took a broader view of the scheduled carrier problem. Stating that air transportation is basically a competitive industry, it recommends complete deregulation. The group also said that if regulation must exist, it should be like that practiced for public utilities, where approval is required for capital expenditures and other expenses. If these are not possible, the group recommends the following specific changes in what it considers the key deficiencies of the system.

--The maintenance of minimum fares protects airline inefficiencies. Carriers tend to raise their cost to the level of prices. There should be real rate competition. This would also require freedom of entry and exit.

--CAB's unwillingness to relax entry and exit sustains the inefficiencies of the system. Though subsidies would probably be needed, other air services should be allowed to replace the scheduled carrier in certain instances.

--CAB should stop using improper financial criteria for fare regulation. Basing the fare structure on rate of return on investment leads to overcapitalization and overdependence on large debt structures.

--CAB does not allow innovative competition. This stifles the industry, eliminates consumer choice, and causes the airlines to miss numerous market "needs." This should be corrected.

Two other important criticisms were emphasized by several of those interviewed, both carrier and consumer oriented.

CAB should show less concern for the scheduled carriers' welfare and more for the public.

The effort to provide consumers with the services they desire and the protection they need (in terms of fares, baggage, etc.) has not been made, even though CAB has the authority.

There is a need to reform the Board's personnel.

Though staff competence has improved, a better qualified staff and more objectivity is still needed.

Recommendations--CAB and air cargo

While those who discussed regulation from a carriers' viewpoint generally ignored air cargo, the persons interviewed from shipper groups and air freight forwarders did not. However, due to what appeared to be a low level of air freight use among those interviewed, recommendations were few.

The only major complaint expressed by those interviewed, other than those of the air freight forwarders, concerned CAB hearing procedures.

CAB hearing review procedures are overly burdensome in terms of paperwork and expense. They should be modified accordingly.

Hearing procedures are felt to be very expensive in terms of time and paperwork and there are complaints about making a final decision at the start of proceedings as to participation or nonparticipation. If a shipper or some other interested party chooses not to be involved in the entire hearing procedure, it needs only to file a statement at the initial meetings. However, once this route is chosen, the party is excluded from participating in later hearings. The alternative is to become a party to the entire proceedings and incur significant ongoing expenses.

The Air Freight Forwarders Association was more explicit in its recommendations which, as with other groups, largely applied to its business interest.

CAB needs an attitude change, paying more attention to air cargo. The Board should promote air cargo and give guidance to the industry instead of continuing to treat it as a stepchild.

Total deregulation of air carriers will have no benefit.

Air freight forwarders should be either completely deregulated or certificated and regulated.

Conditions within the air freight forwarders industry have been unstable, causing the association to recommend that CAB restrict entry/exit as well as rates. Also, CAB should allow forwarders to contract with airlines. As an alternative, forwarders should be totally unregulated. Currently, CAB regulates rates but not entry/exit on routes served.

CHAPTER 5

SUMMARY OF RECOMMENDATIONS AND QUESTIONS RAISED

The recommendations made by those interviewed, along with the positions of those who advocate deregulation, can be simplified into three proposals:

Make only minor changes to the regulatory system which will better accommodate certain transportation modes or interest groups.

Revitalize the regulatory system much within the current structure, but with some deregulation and an alteration of both the regulatory functions and duties of regulatory personnel.

Deregulate the major portion of the transportation industry and allow the natural forces of the marketplace to provide sound and economic transportation.

This is an oversimplification. The spectrum of opinion may range from those who want strict regulation, up to and including nationalization, to those who, as an article of faith, accept no economic interference with the free market system. However, from the interviews, research, and analysis conducted for this report, there is evidence that there are clusters of opinion around these three viewpoints and that the major controversies arising in the current regulatory reform debate are often conflicts between these three basic positions. The three recommendations and their sources follow.

Maintain the current system with only minor changes.

This recommendation was made by most persons interviewed, particularly those who were representatives of groups directly involved in the transportation industry, both shippers and carriers.

Revitalize the system.

Several interviewees indirectly involved with transportation and several former employees of the regulatory agencies made this recommendation.

Deregulate the industry.

Several individuals outside the industry and the majority of economic studies and analyses of economic regulation made this recommendation.

This division among those interviewed and other sources for this study, while not necessarily translatable to the entire universe of people knowledgeable of transportation or economic advocates of deregulation, does raise several broad questions about regulatory reform.

Why is there what appears to be such a dramatic split in the assessment of the need for regulatory agencies between those directly involved in the transportation industry and those advocating deregulation?

Is the perceived need for regulation as expressed by interviewees truly as simple as "vested interest," as those who advocate deregulation say, or does the attitude arise from what the others might say is a more intimate knowledge of "what is possible" in the real world?

Those who advocate transportation deregulation reinforce their primary position with three arguments on the current regulatory system.

It creates economic waste.

The transportation systems have greatly changed since the laws were adopted.

The regulatory structure is at least partially perpetuated because of the vested interest of those involved in the system.

Assuming these arguments to be true, most interviewees agreed that regulation is still needed to prevent rate and service discrimination and instability.

The position of those who desire major regulatory reform is that usually, and over a short period, supply and demand will stabilize prices. Service stability can be obtained by contract as in any other aspect of normal business operations. Prevention of discrimination would be left to strengthened antitrust enforcement. This raises the following question.

Is the control of rate and service discrimination, on a timely, reasonable, and cost effective basis, possible under a deregulated transportation structure where the sole controlling factors would be competition and probably revitalized antitrust laws?

The assumption that deregulation will result in a competitive market raises other questions. This is perhaps best exemplified by the air transport industry, but which also has parallels in the rail, water, and trucking industries.

The air transport industry is one of the industries which those who recommend deregulation see as very competitive and where the immediate consumer benefit would be apparent from regulatory reform. This argument is based on the economic benefits which should emerge from the ensuing competition following deregulation. This competition assumes, as it does for most economic analysis, a world of many buyers and many sellers. It is questionable if this is the real world in transportation, particularly air transport, that is likely to exist under deregulation.

Would the deregulation of most transportation industries result in truely effective competition or could the results be, even with strengthened antitrust enforcement, a consolidation of the industry into several oligopolies?

If an oligopoly structure resulted (which could cut across transportation modes), would the projected benefits of deregulation still accrue to the public?

The necessity of increasing antitrust enforcement and the possible lessening of savings from a marketplace which is not purely competitive could influence the calculation of net economic waste, as discussed by those who advocate deregulation. As exemplified in Edwin Zimmerman's statement in chapter 4, there might also be other wastes due to the elimination of cross-subsidization and income redistribution which now accompany regulation. Thus, another question arises.

Are the economic wastes found by economic analysis of the transportation regulation truely waste, or is this waste a form of transfer payment, which if not made under the current system, would need to be continued from another

source (Federal tax revenues) in order to provide equitable transportation services to the public?

Other questions are raised by the responses of the interviewees within the industry. These largely arise out of their perceptions of the regulatory agencies operations, and do not have the broad scope of the previous questions in terms of the total regulatory reform debate. However, they should be addressed, perhaps before the broader questions, to obtain a clearer understanding of the basis for some of the reform recommendations.

The interviewees expressed, particularly in terms of ICC's role, problems in understanding the purpose of current regulation. Most think the agencies should serve the public interest, but this term had many interpretations, based primarily on individual interest. This raises the following questions.

Why is there an apparent lack of understanding about the purpose of each regulatory agency? Is it due to a lack of legislative definition of the agency's role, or to vacillation by the agency in performing its mission?

Perhaps interconnected with the lack of an understood mission are problems with the functioning of ICC and other regulatory agencies. The point is raised as to whether the slowness in decisionmaking and the lack of objectivity and aggressiveness were the problems, or the symptoms of a greater problem.

Are slowness in decisionmaking and other operational problems symptoms of bad management and poor procedures or are they due to a lack of goals, mission, or an inability to find alternatives to the present situation?

Another general opinion offered by those interviewed is the appropriateness of the original legislation in today's transportation world. This is particularly relevant to ICC and FMC, and with slight alterations, to CAB. The opinions differ, but some suggest the Interstate Commerce Act is outdated; FMC laws need adapting to the real world of ocean shipping; and, while CAB statutes were mostly uncriticized, the functioning of CAB within current laws needs altering.

Are the regulatory statues in need of adaptation to today's transportation systems, and if so, in what areas and to what extent?

Deregulation advocates feel they have addressed this problem and have arrived at an answer, deregulation. However, given the latitude of the normal regulatory agency under current statutes, the interviewees who desire statutory change or updating of current regulation should (and some have) first address a more fundamental question.

> Can the desired changes within the system be made or is statutory impetus necessary to achieve a redirection of the regulatory effort?

Throughout most interviews for all three regulatory agencies, the regulatory body was felt necessary for the proper functioning of a stable transportation industry. With few exceptions, the interviewees who represented segments of the transportation industry and others directly involved in the industry (1) addressed immediate operational regulatory problems, (2) limited recommended changes to factors affecting their businesses interest, and (3) expressed satisfaction with the basic regulatory framework. Yet, at the same time, many were voicing strong complaints and making recommendations to solve the problems of regulatory delay, the lack of knowledgeable and competent people in regulatory agencies, and the stifling of innovation. This raises an important question.

> Why is there satisfaction with a regulatory system which appears to have significant problems, and why are most of the industry-oriented recommendations aimed at solving immediate operational problems rather than those of overall regulatory policy?

As shown in the following sections, some perspectives and recommendations raise numerous, more specific questions concerning the regulatory impact on individual modes.

The major recommendations of the interviewees who address the railroads' problems deal with the railroads' inability to raise adequate revenues under the current regulatory framework. The railroads complain of ICC's regulatory inequities (100 percent railroad traffic regulation versus 40 percent trucking and 10 percent barge), which they feel creates unregulated competition. As a partial solution, they recommend rate flexibility and other additional operational freedoms. It is important to know what role economic regulation has played in the current problems of the railroads.

What is the contribution of economic regulation of railroads to the current financial problems of the rail lines and to what extent would the alteration of the regulatory framework solve these ills?

Are the railroads' problems partially attributable to the inequities of transportation aid and/or to transportation policy outside the scope of regulation?

According to deregulation advocates, the motor carrier industry creates the most obvious economic waste due to restrictive regulation. And yet, the industry gave few major proposals for altering the regulatory system governing them. Even the interviewees representing some private carrier and shipper interests complained little about motor carrier regulation. These positions appear contradictory.

Why, in an industry with purported empty backhauls and other "wasteful" practices, is there such content with ICC's regulated portion of motor carriage?

Is the regulation of motor carriers necessary to provide rate and service stability, the factor seen as the largest regulatory benefit in the trucking industry, and what are the real cost/benefits of this method of maintaining stability?

The inland and coastal water carriers, who have only about 10 percent of their cargo regulated, were represented by the interviewees as being largely unhappy with the competitive aspects of ICC regulation. They felt unjustly treated, compared to railroad and private barge (for hire) competition. Since the railroads and private carriers compete (often unfairly, according to water carriers) with the common water carriers in both regulated and unregulated carriage, the logic of selective regulation of water traffic seems difficult to follow. Those interviewed representing both the railroads and water carriers expressed concerns over the inequities of Federal support between transportation modes. These problems raise the following questions.

How can the railroads, who are 100 percent regulated, engage in discriminatory practices against the largely unregulated water carriers?

Are the problems which need to be addressed concerning the intermodal conflicts which water carriage must face, questions of the equality of Federal support for transportation more than equality of regulatory control?

Those interviewed related the FMC-ocean carriage problem as having an ineffective agency operating under unenforceable laws in an attempt to control international ocean shipping. This is normally handled within a political, rather than commercial, framework. Deregulation advocates largely concur in this assessment of the agency and the industry. The individuals interviewed made recommendations to strengthen FMC's control over maritime shipping. However, several questions should be raised, such as:

What is being accomplished or lost through attempts to regulate the maritime industry? Is it necessary and are there other more practical means to achieve the same benefits?

Are international diplomacy and cartel arrangements hindering effective regulation of ocean freight and if so, should maritime regulation, to the extent possible, not be handled through international political negotiations?

Is it possible, or even desirable, to introduce and maintain competition in the maritime industry, as deregulation advocates recommend, on a unilateral basis, into what is now an industry typified by cartel arrangements?

Almost all interviewees involved in air transport expressed dissatisfaction with CAB. The major exception was the representative of the scheduled carrier organization who voiced fewer and more minor complaints. Many of the recommendations made countered those of the others, with each interviewee attempting to strengthen his own interest. The disagreement largely boils down to one question.

Can and should the market demands for air charter, better air freight, and other new or improved services be met without harming the beneficial aspects of the current system, and if so, how?

This is not necessarily a question of deregulation versus regulation. Here, as in other cases, the needs of the system could be met through both highly regulated or totally unregulated systems with varying costs/benefits.

INTERVIEWEES

Air Freight Forwarders Association
1730 Rhode Island Avenue NW., Suite 607
Washington, D.C.
293-1030
Trade association of regulated air freight consolidators and forwarders.

Air Transport Association
1209 New York Avenue NW.
Washington, D.C.
872-4000
Trade association of the U.S. scheduled air carriers.

American Institute for Shippers Association, Inc.
1730 M Street NW., Suite 502
Washington, D.C.
296-7363
Trade association of private freight consolidators and distributors.

American Institute of Merchant Shipping
1625 K Street NW.
Washington, D.C.
783-6440
Representatives of ocean shipping conferences.

American Trucking Associations, Inc.
1616 P Street NW.
Washington, D.C.
797-5221
Trade association of motor carriers.

American Short Line Railroad Association
2000 Massachusetts Avenue NW.
Washington, D.C.
785-2250
Association of small, limited track, and mostly privately owned railroads.

Association of American Railroads
1920 L Street NW., Room 407
Washington, D.C.
293-4000
Association of the major U.S. railroads.

Aviation Consumer Action Project
1346 Connecticut Avenue NW., Room 1007
Washington, D.C.
223-4498
Public interest aviation study group.

COMET (Committee on Modern Efficient Transportation)
1717 K Street NW., Suite 1200
Washington, D.C.
785-0048
Small group of large corporations which have significant shipping and distribution requirements and mostly own and operate their truck fleets along with a trade association.

Cooperative League of the U.S.A.
1828 L Street NW.
Washington, D.C.
872-0550
Representatives of consumers and a cooperative member interested in specified areas.

Equipment Interchange Association
1625 O Street NW.
Washington, D.C.
797-5273
Association of businesses engaged in interchange of transportation equipment between modes.

Freight Forwarders Institute
2000 K Street NW.
Washington, D.C.
659-8787
Association of freight forwarders.

Lake Carriers Association
614 Superior Avenue NW.
Cleveland, Ohio
(216) 621-1107
Trade association for the Great Lakes carriers, mostly bulk commodity.

National Air Carriers Association
1730 M Street NW., Suite 710
Washington, D.C.
833-8200
Trade association of nonscheduled (charter) air carriers.

National Industrial Traffic League
425 13th Street NW.
Washington, D.C.
393-1693

Organization of shippers; shippers' associations; boards of trade; chambers of commerce; and other entities concerned with rates, traffic, and transportation services of all carrier modes.

National Passenger Traffic Association
909 Third Avenue
New York, New York
(212) 935-1772

Trade association of travel departments of private corporations.

Private Truck Council of America, Inc.
1101 17th Street NW., Suite 1008
Washington, D.C.
785-4900

Association of manufacturers, retailers, etc., who use their own truck fleets to haul their goods.

Public Interest Economics Center
1714 Massachusetts Avenue NW.
Washington, D.C.
872-0313

Public interest economic study group.

Mr. Stanton P. Sender
Transportation Council, Sears, Roebuck and Co.
1211 Connecticut Avenue NW.
Washington, D.C.
223-5840

Transportation law processor and active member of several transportation interest groups.

Transportation Association of America
1100 17th Street NW.
Washington, D.C.
296-2470

National policy organization of transportation users, investors, and carriers.

U.S. Chamber of Commerce
1625 H Street NW.
Washington, D.C.
659-6122

Representatives of U.S. business interest.

Water Transport Association
1200 18th Street NW.
Washington, D.C.
296-3456
Common water carrier national trade association.

Several other organizations and individuals contacted did not have a notable response and have been excluded.

THE EVOLUTION OF REGULATORY AUTHORITY IN TRANSPORTATION

This section provides a chronological discussion of the evolution of the three transportation regulatory agencies: ICC, FMC, and CAB. The discussion states the conditions which led to a congressional interpretation of the problem, and subsequent legislative action to solve it. It deals only with the major legislative and judicial actions which are of historical importance and which aid in understanding the basis for establishing the regulatory agencies and the evolution of their authority. Appendix III contains a detailed extract of the amendments to the acts which founded ICC, FMC, and CAB.

THE INTERSTATE COMMERCE COMMISSION

For about 20 years before the Interstate Commerce Act of 1887, the Congress had been concerned with railroad regulation but could not agree on any legislative action. At that time, the railroads had been increasingly involved in speculative railroad building, and the industry reached a point of considerable excess capacity. There were severe public reactions to the resulting fluctuating and discriminatory rates, the destructive competition, and eventual monopolistic tendencies. Attempting to deal with the problem, the States, particularly the Midwest, established State regulations over the railroads passing within their borders. A prime stimulus behind State regulation was the Granger movement. This organized group of farmers, feeling the brunt of the railroad's discriminations as they shipped their grain to Eastern markets, brought political pressures on Midwestern State governments to take action to protect their interest.

In January 1886 Senator Shelby M. Colburn (Rep.-Ill.) submitted a report to the Congress from the Committee on Interstate Commerce detailing the complaints against the railroad system and outlining the basic provisions of what would later, upon modification, become the Interstate Commerce Act.

One of the major disputes between the House and Senate railroad regulation bills was the Senate's demand for a Federal regulatory commission and the House's insistance that the courts be relied upon for enforcement. The stimulus for compromise and the eventual establishment of the regulatory commission came on October 25, 1886 (Wabash, St. Louis and Pacific Railway Co. v. Illinois 1/), when the Supreme Court found that the regulation of commerce whose destination

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1/118 U.S. 557.

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or origin was beyond the boundaries of a State was within Federal jurisdiction.

THE ESTABLISHMENT OF THE INTERSTATE COMMERCE COMMISSION

The Interstate Commerce Act (1887, 24 Stat. 379) has 24 sections, most of which deals with establishing the Commission, the composition and salaries of its members, and its practices and procedures. The Commission was to consist of five members, each serving for 6 years. The provisions which relate to the railroad activities, are listed below.

Section 1: Limits the Act to railroads, except where water is part of continuous rail transport. It also provides that all transportation of passengers and property by or upon a railroad be reasonable and just.

Section 2: Makes it unlawful to show personal favoritism and prohibited discrimination. It also provides for equality of rates for all shippers and prohibited special rates, rebates, drawbacks, and other such devices.

Section 3: First paragraph--Prohibits all discrimination against localities, types of traffic, and persons.

Second paragraph--Requires railroads to furnish to connecting roads reasonable and proper facilities for traffic interchange.

Section 4: Prohibits greater aggregate charges for a shorter haul than longer distances over the same line, in the same direction, and with the same original point of departure.

Section 5: Prohibits pooling of either freight or proceeds.

Section 6: Requires the publication and maintenance for public inspection of rates and charges and the filing of these with the Commission. It also requires 10 days notice of a rate change, and made it unlawful to charge other than the published rates.

Further, the Commission was given authority under sections 12 and 20 to inquire into railroad management and other common carriers, and to obtain information from the carriers, including an annual report from the railroads.

THE LEGAL BASIS FOR REGULATION

The Supreme Court's decision in Munn v. Illinois (94 U.S. 113, 1887) had no direct link to the Interstate Commerce Act or the establishment of the Commission. However, it established the basis upon which Government regulation now rests in the United States.

The railroads challenged the legality of the Granger-instigated State regulation by Government interference with the right of private property. The Court decided in favor of the State, and of regulation, saying that whenever "* * * one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good to the extent of the interest he has thus created." 1/

CHANGES IN THE COMMISSION--1887-1906

Removal of Commission from Interior

The original act establishing the Interstate Commerce Commission subjected it to the financial control of the Secretary of the Interior. In 1889 the Congress eliminated this control and made it an independent agency.

The Maximum Rate Case and Alabama Midland Case

Within 10 years of the original act, the Supreme Court handed down two decisions which severely weakened ICC's power to control rates. In the Maximum Rate Case (167 U.S. 479 (1897)), the Court denied the Commission the power to fix rates or prescribe any tariff, stating that it did not have the power to fix a minimum nor establish an absolute rate. The Court then eliminated the long-short haul clause of the Act (Section IV) in ICC v. Alabama Midland Railway Company (168 U.S. 144 (1897)), holding that the clause of the Act related only to traffic over a single road and not to joint rates.

Safety Appliance Act

In 1893 the Safety Appliance Act gave ICC the job of enforcing railroad safety. ICC did this job until the creation of the Department of Transportation in 1966 when all powers related to transportation, except economic regulation, were vested with the new Department.

1/Schwartz, Bernard, The Economic Regulations of Business and Industry, Vol. I, p. 18, New York, 1973.

The Elkins Act

With the weakening of the Commission, rebating, discounting, and secret pricing again grew. This created pressures on the Congress from shippers and some carriers to pass rate stabilization legislation. This resulted in the Elkins Anti-Rebating Act of 1903, which attempted to correct some of these problems through stronger penalties against violators of the Interstate Commerce Act. The Elkins Act (1) made the railroad corporation liable for prosecution (courts had held that only officers, employees, and agents could be prosecuted), (2) made it unlawful for shippers to solicit or receive rebates or favorable treatment, (3) made departure from published rates a misdemeanor, and (4) authorized the courts to enjoin carriers upon proof of such misconduct.

STRENGTHENING THE COMMISSION

The Elkins Act, however, did not solve the problems of ICC's control over the railroad activities. Judicial decisions and railroad actions had so weakened ICC that in its 1897 Annual Report to the Congress ICC concluded that "there is today * * * no effective regulation of interstate carriers." ICC found it did not have the power to directly fix rates and could not take any definitive action. Railroads could set rates as high or low as they wanted, subject only to provisions that they not be unduly discriminatory and that they be published. Enforcement came only with application to the Federal courts and the basic effect was to turn ICC into an agency of only preliminary hearings.

These factors along with an environment of

--continued railroad consolidation;

--sharp increases in railroad freight rates;

--the concentration of control of railroads in a few men;

--disclosures which showed the impact of railroad rate discrimination upon monopoly growth, led to the Hepburn Act of 1906. 1/

The Hepburn Act is considered the key statute in ICC's history. It gave ICC the following major powers and changes:

1/Ibid, p. 594.

--Express authority to prescribe maximum rates.

--The Commission's orders were to be effective immediately and remain so unless set aside by the courts.

--Express power to issue reparation orders if there was an injured party.

--Extension of powers to include express companies, sleeping car companies, and pipeline companies which transport oil.

--A clause prohibiting railroads from transporting any commodities they owned or produced except timber. (This clause was included because of certain abuses of railroad power in West Virginia coal fields. The exception was made because the sole purpose of some Western railroads was to carry their timber out of the mountains.)

--ICC was expanded to seven members, their salaries were increased, and they were given increased powers to obtain information. 1/

ESTABLISHMENT OF PRIMARY JURISDICTION

Probably the most important judicial decision under the Hepburn Act was the case of Texas and Pacific Railway Co. v. Abilene Cotton Oil Co. (204 U.S. 426 (1907)), which established the doctrine of primary jurisdiction. The Court ruled that once an administrative agency was established and vested with jurisdiction over a case, the courts are restricted to judicial review.

Further, the Court said that the necessity for primary jurisdiction being vested in the Commission rested on a practical consideration. Without such jurisdiction, different courts and juries would decide on reasonableness in a variety of cases and, unless they all reached identical decisions, a uniform standard of rates would be impossible. This ruling established the basis for modern administrative power as exercised in administrative law and as practiced by today's regulatory agencies.

ADDITIONAL CONTROL OVER INTERSTATE RATES

Though the Hepburn Act strengthened ICC's powers, complaints continued from both shippers and carriers over system

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1/Ibid, p. 394-5.

deficiencies. To meet these grievances, the Congress passed the Mann-Elkins Act of 1910.

The major provisions of the Mann-Elkins Act were as follows:

--Authorized ICC to suspend proposed rate changes for 120 days. An additional extension of the suspension of up to 6 months may be made until satisfactory review of the proposal was completed.

--Gave ICC control over freight classification.

--Empowered shippers to designate their shipment route.

--Reestablished firm ICC control over long-short haul freight rates.

One provision of the long-short haul clause was that if a carrier reduced rates to compete with water transportation, it could not then increase these rates unless conditions had changed; other than the elimination of water carriers. It was one of the initial congressional efforts to retain intermodal competition.

An interesting, though unimportant part of this Act established the Commerce Court, a special court of judicial review. The court was abolished in 1913 following continued political frictions and conflicts with ICC decisions.

During the debate of this Act, Congressman William Sulzer (Dem.-N.Y.), found the piecemeal approach toward transportation unsatisfactory and, for the first time, called for the creation of a department of transportation.

A CHANGE FROM RESTRICTIVE REGULATION

The Transportation Act of 1920 came in response to many factors which had gripped the railroads before and during World War I. During the period of 1913-16, the rail lines suffered from severe financial problems, and a significant percentage of their total track miles were in receivership. The demand put upon the railroads during the war created enough instability in the industry that President Woodrow Wilson issued a proclamation taking over the railroads on December 26, 1917. The necessity for providing stability following the returning of the railroads to private operation on March 1, 1920, provided the main thrust behind the enactment of this legislation.

The 1920 Act was probably the first positive Government response to transportation problems in that it set out to promote an efficient and economically viable transportation system. Rather than regulating against practices in the industry, its purpose was to insure an adequate transportation service for the public, to create a strong railroad system, and to insure a fair profit to its owners.

The major provisions of the Transportation Act empowered ICC with the following:

--Authority to approve consolidation of existing lines to the extent necessary for establishing a better transportation system.

--Control over the issue of railroad securities toward the goal of maintaining sound financial policies.

--Expanded power over rates, enabling the fixing of minimum as well as maximum rates, and the duty to prescribe rates that would allow the railroads a fair return on investment.

--Authority to supervise car service, including the power to require adequate service and to prevent abuses.

--Authority to increase its size from 9 to 11 with the expressed power to operate in divisions of 3 or more members. 1/

Other provisions dealt with the mechanics of returning the railroads to private ownership with a considerable amount of the debate and legislation being devoted to labor practices.

THE REGULATION OF MOTOR CARRIERS

During the Depression, numerous railroads went bankrupt due to low rates of rail utilization and dwindling rates of return. With the trucking industry growing due to the ease of entry, the railroads were either forced to quote low rates or lose traffic.

1/Ibid, p. 1393.

Regulators, along with some carriers (in particular the railroads), believed there were too many trucks, too many trucking firms, too much irresponsible service, and instability in carriers and rates. The heavy pressure from the carriers, regulatory concerns, and some shippers eventually led to the Motor Carrier Act of 1935.

The Act, for the purpose of regulation, divides the industry into three types of service:

1. Common carriers--Carriers who are available to the public to carry all persons or goods.

   --Required to obtain certificates of convenience and necessity which specify the service to be rendered and the routes over which the carrier is authorized to operate.

   --All rates must be reasonable and not discriminatory.

   --Rates may be suspended for up to 7 months.

   --ICC may prescribe maximum rates, minimum rates, or the actual rate to be charged.

   --The carriers are obligated to provide safe and adequate service.

2. Contract carriers--Carriers that offer specialized service for particular shippers and who tend to deal with only a few shippers.

   --Must obtain a permit, providing that they are fit, willing, and able to perform the contract service which must be consistent with public interest and the national transportation policy.

   --Carriers minimum rates must be publicized. (Amended in 1957 to require publication of actual rates and for carriers to adhere to them.)

3. Exempt carriers--Exempted from regulation were private carriers hauling their owners' goods; motor vehicles owned by railroads, water carriers, or freight forwarders incidental to their business; local carriage; vehicles carrying fish, livestock, or agricultural commodities; trucks exclusively

carrying newspapers; and trucks owned and operated by agricultural cooperatives. 1/

THE REGULATION OF INLAND WATER CARRIERS

Approximately the same forces that urged the passage of the 1935 Motor Carrier Act again joined together, utilizing much the same reasoning, essentially the growing competition of a basically unregulated industry, to help pass the Transportation Act of 1940. The Act established the regulation of certain coastal, intercoastal, and inland water carriers like the 1935 Act regulated motor carriers. The regulation of certain intercoastal shipping had been vested with FMC, (then the United States Shipping Board) under a 1936 act which is discussed below.

Common water carriers were required to hold certificates of convenience and necessity while contract carriers were required to hold permits. Other major provisions were:

--The Commission can prescribe minimum, maximum, and actual rates.

--Rates must be published, adhered to, and free from discrimination.

For contract carriers, the provisions were:

--The Commission may prescribe minimum rates but not maximum, with 30 days notice for lowering.

--Actual rates need not be filed.

The Transportation Act of 1940, however, has considerable exemptions which limits ICC regulation over as much as 90 percent of the total intercity ton-miles of water carriage. 2/ The exemptions include:

--All bulk water carriers, provided not more than three bulk commodities are carried in the same vessel or tow. (Amended in December 1973, Public Law 93-201, to permit the carriage of more than three different commodities.)

1/Moore, Thomas Gale, Freight Transportation Regulation, American Enterprise Institute, Washington, D.C., 1972, p. 27.

2/Ibid, p. 32.

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--Liquid cargoes in bulk in tank vessels designed for use exclusively in such service.

--Commodities transported by contract carriers which, by the inherent nature of the commodity, is not actually or substantially competitive with motor carriers, railroads, or other water carriers.

--Private carriage.

--Small craft of not more than 100 tons carrying capacity or not more than 100 horsepower and the movement of any craft within harbors, unless the Commission declares their regulation necessary. 1/

THE REGULATION OF FREIGHT FORWARDERS

ICC recommended regulating freight forwarders as early as 1930 due to the special relationship that existed between forwarders and the railroads. 2/ The railroads were offering expedited services, special facilities, and generally superior treatment to freight forwarders than that given to other shippers. The forwarders provided a major service to both the railroads and the less-than-carload shippers, but the special relationship was viewed as threatening to the stability of the rate structure.

The 1942 Freight Forwarder Act has several major provisions.

--The Commission had the power to determine maximum, minimum, or actual rates.

--Freight forwarders can, under certain conditions, enter into contracts with motor carriers for truckload shipments.

--All rates must be reasonable, nondiscriminating, published, and adhered to.

--Thirty days notice must be given before a rate change.

1/Ibid, p. 31.

2/A freight forwarder consolidates less-than-carload shipments of several carriers into single shipments and arranges the pickup, transportation, and delivery of goods for a shipper, usually through a common carrier.

--Entry requires a permit which is not conditioned upon the new forwarder's effects on competing forwarders. (This clause was changed in 1957 to require permits for new entrants on the condition of the effects on competing forwarders, except for railroads, which are exempt from this requirement.)

--The Act exempts freight forwarding performed by or under the direction of a cooperative association and for shipments of ordinary livestock, fish, agricultural commodities, or used household goods.

THE EXEMPTION OF RATE CONFERENCES FROM ANTITRUST

In 1945 the Supreme Court reaffirmed in the State of Georgia v. The Pennsylvania Railroad (324 U.S. 439 (1945)), that regulated industries are not exempt from antitrust laws. The congressional action which reestablished the legality of rate bureaus and conferences was the Reed-Bulwinkle Act of 1948. The Act grants carriers who organize rate bureaus, provided the rates and methods used by the bureaus are ICC approved, immunity from the antitrust laws. The Act also:

--Guarantees each carrier the right to take action independent of a rate bureau.

--Prohibits intermodal rate bureaus agreements except for joint or through rates.

AN ATTEMPT TO PROMOTE INTERMODAL COMPETITION

The Transportation Act of 1958 was partly enacted to provide guaranteed loans to the troubled rail carriers of the United States. However, the Act included a clause that said rates shall not be held up to a particular level to protect the traffic of any transportation mode, given due consideration to the objectives of the national transportation policy. The effect of this portion of the law is highly disputed, because of considerable disagreement as to whether ICC has actually held rates high to protect specific modes.

THE EVOLUTION OF THE FEDERAL MARITIME COMMISSION

Shipping conferences 1/ have historically been part of maritime carriage, with rate wars emerging as various conferences broke down. Until recently, the United States was the only major maritime nation that maintained statutory regulation of ocean shipping conferences.

The first significant activity concerning U.S. shipping regulations was in 1911 when the Department of Justice brought suit against three shipping conferences, charging agreements and practices in restraint of trade under the Sherman Antitrust Act. The suits all involved German lines and the outbreak of World War I before a final Supreme Court ruling made the question moot.

In partial response to these judicial activities, as well as shipper complaints of discrimination, arbitrary actions, and conferences using monopolistic devices such as deferred rebates and fighting ships, 2/ the House Committee on Merchant Marine and Fisheries investigated shipping combinations in 1912. The final report (known as the Alexander Report for Chairman Joshua W. Alexander of Missouri) was issued in 1914 with the following general conclusions. 3/

--Conferences were a necessary evil.

--They should be allowed to continue under close supervision.

--History has shown that they are necessary to prevent monopolistic conditions.

1/A shipping conference is a cartel type organization of steamship lines which controls rates and other conditions for moving cargo over the group's trade routes, usually within a particular geographic area.

2/A vessel used in a particular trade by a carrier or group of carriers for excluding, preventing, or reducing competition by driving another carrier out of said trade. (39 Stat. 733).

3/Carver, Robert, "Public Policy in the Ocean Freight Industry" Promoting Competition in Regulated Markets, Brookings, pp. 101 and 202.

--Antitrust laws were ineffective in establishing and maintaining control of conferences.

--They provide shippers the benefits of regular service and stable rates.

Shippers cited excessive rates, rate discrimination, lack of published tariffs and classifications, deferred rebates, and system instability as the undesirable effects of the existing conference system. They favored some regulation of the conferences. Generally, the carriers were not greatly opposed to regulatory control.

THE REGULATION OF THE OCEAN FREIGHT INDUSTRY

The net result of the debate was the passage of the Shipping Act of 1916 (39 Stat. 728), which still remains the basic statute on the regulation of ocean shipping. 1/ The Act established the United States Shipping Board with the authority to supervise common carriers operating on regular routes in the foreign commerce of the United States. It recognized the desirability of ocean shipping conferences and specifically exempted them from the antitrust laws, subject to the provisions of the Act. The Act's provisions included:

--Prohibition against the employment of deferred rebates, using fighting ships, retaliating against a shipper by refusing or threating to refuse space accommodations when such accommodations are available, and making unfair or discriminating contracts. (Subsequent amendments empowered the Secretary of Commerce to refuse entry into American ports any foreign carrier who has violated these prohibitions or who denies an American line admission to a conference on equal terms.) 2/

--Requiring carriers to file agreements, modifications, and cancellations with the Shipping Board that fix rates or control competition. The Board could disapprove, cancel, or modify any agreement modification or cancellation it finds discriminatory or which

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1/Three types of services are generally available to maritime shippers: (1) liner services--common carriers operating on regular schedules, (2) tramp services--contract carriers available for hire or charter, and (3) industrial carriers--private carriers moving proprietary cargo. Of these, maritime regulation has only been concerned with common carriers.

2/Stat. 996.

operates to the detriment of U.S. commerce. Approved agreements are exempt from U.S. antitrust laws.

--Requiring water carriers to publish and adhere to tariffs and file maximum rates, fares, and charges, as well as classifications, with the regulatory agency. The Board was given authority to pass upon reasonableness of rates, and could disapprove conference agreements if necessary. The Board was also given authority to require reports and other information from the carriers and the authority to investigate complaints.

The United States Shipping Board has been reorganized four times since its establishment and in all cases, except the most recent, the agency retained promotional as well as regulatory responsibility. The Board became the United States Shipping Board Bureau under the Department of Commerce in 1933 through Executive Order No. 6166, then the United States Maritime Commission through the Merchant Marine Act of 1936, and with the Reorganization Plan No. 21 of 1950, the Federal Maritime Board. Finally, President Kennedy's Reorganization Plan No. 7 in 1961 established the independent FMC and transferred the maritime promotion and subsidy programs to the Maritime Administration and the Maritime Subsidy Board in the Department of Commerce.

The confusion of repeated reorganizations and the dual responsibilities of promotion and regulation was further complicated by the limited regulatory power of the Board under the 1916 Act. Between 1916 and 1959, no penalties were imposed under the Act's provisions. 1/ Direct shipper complaints to the Commission were very limited, because they were passed along by the Commission to the carriers who were the subjects of the complaints.

ADDITIONAL REGULATION OF WATERBORNE COMMERCE

Several acts during the 1920-40 period changed the complexion of U.S. maritime policy but did not considerably alter the maritime regulatory powers of the Shipping Board.

The United States emerged from World War I with an enormous merchant fleet. The fleet was kept busy with a steady demand for its services until about 1920 when the industry found itself with great excess capacity. As part

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1/"Rate Regulation in Ocean Shipping," Harvard Law Review Vol. 78, p. 640.

of the effort to remedy this situation and make permanent some of the temporary war legislation, the Congress passed the Merchant Marine Act of 1920 (41 Stat. 988). The Act provided for the sale of Government-owned ships, offering assistance to purchasers through special Government arrangements. In addition, the Act limited the participation in U.S. coastal trade to American-owned vessels, repealing a 1914 act that had permitted foreign vessels.

Further restrictions were put upon intercoastal commerce by the Intercoastal Shipping Act of 1933 (47 Stat. 1425). The Act provided that common carriers engaged in intercoastal trade file and post their rates, fares, charges, and classifications with the Board, and that the Board could investigate and hold hearings as to the reasonableness of these filings. Most of the intercoastal commerce regulation was transferred to ICC in 1940 under much stricter provisions, with the exception of deep sea shipping engaged in domestic trade to and from Alaska, Hawaii, Puerto Rico, and the Virgin Islands. These provisions are noted under a previous section entitled "The Regulation of Inland Water Carriers."

As previously mentioned, the Merchant Marine Act of 1936 (49 Stat. 1985) changed the organization of the Shipping Board Bureau to the United States Maritime Commission. It did little else which had any impact on the regulatory powers of the Commission. However, the 1936 Act is remembered for initiating support for the United States merchant marine, establishing both direct construction and operating subsidies along with a variety of less important provisions for the promotion of the merchant marine.

THE IMPETUS OF CHANGE

It was known when the Shipping Act of 1916 was passed that conferences could substitute dual-rate contracts 1/ for the deferred rebate system which had been made illegal. The leading U.S. independent line, Isbrandtsen Company, challenged the legality of dual rates in 1948 (Federal Maritime Board v. Isbrandtsen Co., 356 U.S. 481, 1958). After 10 years of litigation and dispute, the Supreme Court ruled in favor of Isbrandtsen and held dual-rate systems to be intended to stifle competition, and, therefore, illegal under the 1916 Act.

1/Dual-rate contracts are contracts between a shipper and a conference where the shipper agrees to make all shipments of a specific commodity over a certain route on ships of that conference, and in return receives a reduced schedule of rates.

The Congress' reaction was to pass temporary legislation legalizing the existing dual-rate systems pending results of several studies which were then initiated.

THE LEGALIZATION OF DUAL RATES (1961 AMENDMENTS TO THE SHIPPING ACT, PUBLIC LAW 87-3461)

Two major reports emerged from the congressional inquiries, one from Representative Bonner, Chairman of the House Merchant Marine and Fisheries Committee and the other from the House Committee on the Judiciary, headed by Representative Celler. Their conclusions were that a conference system was essential for the maintenance of regular service and stable rates. Investigations also showed that the 1916 Act did little to correct the abuses of the conference system.

The major provisions of the 1961 law were aimed at resolving the carrier-shipper disagreements over dual-rate contracts, and though adding some strength to the Commission powers, continued to rely on competition from independent lines to keep rates at reasonable levels.

The Act gave FMC new authority and responsibility. The major provisions were:

--Commission authority over all rates inbound and outbound by common carriers operating in foreign commerce as well as rules and regulations relating to these rates. The rates must be filed and adhered to by the filing carrier.

--Rates must be filed 30 days before effective.

--The Commission may disapprove rates so unreasonably high or low as to be detrimental to U.S. commerce.

--No conference agreement will be approved unless membership is open on the same terms to any carrier.

--Allowed any carrier to enter into dual-rate contracts with any shipper subject to specific restraining provisions and the filing of the agreement with the Commission. 1/

1/Larner, pp. 110 and 111.

The 1961 legislation was the last major attempt to alter the authority and thrust of FMC. It did not solve many Commission problems, one of the most important of which is the conflict between the Commission's authority to obtain information from foreign carriers and the resistance of foreign governments to do so. Since most of the Commission's activity is the regulation of common carrier conferences engaged in foreign commerce, this inability to deal with the direct competition of the conferences severly limits FMC's effectiveness.

THE REGULATION OF AVIATION

The development of aviation in the United States was initially haphazard and uncoordinated. The Government had an interest in promoting aviation and regulating the safety of aircraft and aviators. The promotion of aviation during the 1920s and 1930s was the primary responsibility of the Department of Commerce, but indirectly, the Post Office Department had more influence through its mail route contracts. Initial awarding of mail routes was to the low bidder through competitive bidding. Since this was the only stable business available for air carriers, the Post Office held substantial financial control over the survival of those carriers then in service. In addition to the involvement of the Departments of Commerce and Post Office, ICC had authority to fix rates for airmail.

REGULATION OF AIR SAFETY

The first major piece of legislation seriously affecting the air carrier industry was for regulation of the craft and its pilot. The Air Commerce Act of 1926 vested in the Secretary of Commerce the responsibility for registration of aircraft, certifying pilots, lighting civil airways, installing navigation beacons, and establishing penalties for noncompliance with the Act. The Act also gave the President the authority to reserve airspace for special purposes.

THE REGULATION OF CIVILIAN AIR CARRIAGE

By the mid-1930s, the lack of coordination of aviation matters within the Federal Government led to the opinion that all Federal involvement in aviation should be made the responsibility of one agency. In addition, passenger travel had begun to emerge and a substantial new investment was necessary to make air passenger service a viable possibility. Toward the mid- and late-1930s, mail routes were in such demand that route bids were growing increasingly low, often to the point of destructive competition. It was felt that Federal regulation was necessary to keep excessive competition from

destroying the financial stability of the industry and that the assurance of route security was one method of making investment in airlines attractive.

All of these factors eventually led, after several years of unsuccessful effort, to the Civil Aeronautics Act of 1938. The Act established the Civil Aeronautics Authority, a five member independent agency with powers over both the economic and safety regulation of civil aviation, and the Air Safety Board, which investigated aviation accidents and made recommendations for the prevention of future accidents.

The Civil Aviation Authority was empowered to direct and encourage the development of civil aeronautics and air commerce in the United States. Among the major aspects of the 1938 Act were:

--The requirement of a license to engage in air carriage based upon certification of public convenience and necessity, for both domestic and international routes.

--The carrier must file with the authority and adhere to rates and tariffs which are just and reasonable, and which the authority may modify, reject, or accept. The Act also prohibits rebating and requires notice for change in rates.

--The Authority had the power to determine mail rates and amounts of subsidy.

--It gave the Authority powers over the financial and corporate structure of the carrier and the ability to control mergers and consolidations.

--Required registration and certification of aircraft and airmen, and provided for other air and navigation safety standards.

Considerable debate was given as to whether aviation should be regulated by a separate authority or fall under a separate division of ICC. The major reasons the Congress went to an independent agency is because it was felt that ICC at that time was already overworked, that aviation was of such an importance it needed the support of its own agency, and that there was a need for men trained in aviation to make the regulatory decisions.

THE REORGANIZATION OF THE CIVIL AERONAUTICS ADMINISTRATION (1938-58)

Within 2 years of the establishment of the Civil Aeronautics Authority, the organization was split under Reorganization Plans Nos. 3 and 4 of 1940. The reorganization created the Civil Aeronautics Administration (CAA) and the Civil Aeronautics Board. CAB absorbed the investigation functions of the Air Safety Board (the Board was abolished) and retained the quasi-legislative and quasi-judicial functions of safety rulemaking and economic regulation.

CAA took on the operational functions of the old Authority plus the air navigation and promotional aspects. CAA was given additional authority over air navigation rulemaking by an Act of Congress on July 1, 1948 (62 Stat. 1216).

Reorganization Plans Nos. 5 and 21 of 1950 resulted in the CAA being firmly placed within the Department of Commerce under the Under Secretary for Transportation. 1/ It retained responsibility for managing the airways, but often, other diffused groups and panels were formed to deal with aviation policy and problems. CAB continued to make safety rules and control economic regulations; its authority being basically unchanged.

CREATION OF THE FEDERAL AVIATION AGENCY (FEDERAL AVIATION ACT OF 1958)

Several major shortcomings of the pre-1958 situation stimulated new aviation legislation. The first was a general diffusion of authority, together with the subordination of aviation interest, to other interests within the Government, specifically the Department of Commerce and the Bureau of the Budget.

Air traffic had been increasing rapidly. Their had been many near midair collisions and actual accidents, along with numerous other airway problems. In addition, there was the highly publicized development of a civilian air traffic control system which was not compatible with the military system. Moreover, there was a lack of clear statutory authority for centralized airspace management and related activities.

1/Schwartz, Vol. V, p. 3338.

These problems led to the Federal Aviation Act of 1958. Though the major thrust of the Act was to create the Federal agency (Federal Aviation Agency) as a new independent regulatory authority, it also outlined an aviation policy which CAB was to consider in the performance of its duties.

--Encouraging air transport development to meet the future needs of foreign and domestic commerce, the Postal Service, and national defense.

--Regulating air transport to assure the highest degree of safety, foster sound economic conditions in air transportation, and coordinate transportation between air carriers.

--Promoting adequate, economic, and efficient service at reasonable charges and without discrimination.

--Preserving competition to the extent necessary to assure sound development of an air transport system able to meet the needs described above. 1/

The Federal Aviation Agency was given the responsibility and authority for advancing and promoting civilian air transportation along with most of the nonregulatory powers of the Civil Aeronautics Authority. These included:

--Promulgation and enforcement of safety regulations.

--The management of national airspace along with air traffic rules.

--The development of air navigation facilities.

CAB retained its economic regulatory functions, while its responsibility to investigate accidents and its quasi-judicial powers related to airmen, aircraft, and safety actions were later delegated to the Federal Aviation Administration under the Department of Transportation. The accident investigation and related safety functions were later redelegated to the National Transportation Safety Board.

1/Guandolo, John and Fair, Marvin L., Transportation Regulation, Wm. C. Brown Pub., Dubuque, Iowa, 7th Edition, 1972 p. 43.

Limitations were put on foreign carriers by the Act (section 402(a) 49 U.S.C. 1372(a)) which established that foreign carriers engaged in U.S. air transport must obtain a permit based on the fact that they are fit, willing, able to perform, and that it will be in the public interest. The law was written, however, so that the President has the ultimate authority over foreign air carriers and CAB only recommends action.

There have been numerous other changes in Federal involvement in airline regulation since 1938, but the basic regulatory authority of CAB and its purpose as outlined in the original act have not been altered. The many amendments to the 1938 Act have addressed specific minor administrative or newly found safety problems but have not changed the agency's thrust. Even the 1958 Act was only a reenactment of the Civil Aeronautics Act of 1938. This was because the economic regulation of airlines outlined in the 1938 Act was drawn heavily from the Interstate Commerce Commission's Act, and thus, was far ahead of the industry's development.

ESTABLISHMENT OF THE DEPARTMENT OF TRANSPORTATION (DEPARTMENT OF TRANSPORTATION ACT of 1966)

By 1966 the Federal involvement in transportation had grown to where almost 10,000 Government employees and $6 billion in Federal funds were devoted annually to transportation. 1/ The concensus in and out of the Government was that it was time to consolidate Federal efforts in transportation so that there could be organizational indentity by mode, special attention given to safety matters, and above all, transportation could receive the recognition of national importance it deserved through a cabinet level position.

President Lyndon Johnson called for the formation of the department in his transportation message to Congress in March 1966. The resulting bill was signed into law in October of the same year.

The Act took all Federal powers in the transportation area and vested them in the new department with one major exception. It did not touch the economic regulatory functions of the independent regulatory agencies. Furthermore, the Act says nothing about the divided jurisdiction of the four transportation regulatory agencies (including the Federal Power Commission's control over natural gas pipelines). Only the safety and accident investigation functions were transferred to the Department of Transportation.

1/Schwartz, p. 3477.

The Federal Aviation Agency was transferred to the new Department, becoming the Federal Aviation Administration. The original bill was also to have transferred the Maritime Administration and its functions to the Department of Transportation, along with the United States Coast Guard. However, following considerable debate, that legislation was amended to allow the Maritime Administration to remain under the Department of Commerce.

DETAILS OF LEGISLATIVE EVOLUTION

AMENDMENTS TO INTERSTATE COMMERCE ACT AND RELATED ACTS

1889--Clarified provisions relating to tariffs, added force to penalty provisions, added a requirement that ICC should execute and enforce the provisions of law, and removed the provision requiring ICC to report to the Congress through the Department of Interior.

1893--Compulsory Testimony Act. Gave immunity from self-incrimination. Safety Appliance Acts set standards for the promotion of the safety of travelers and employees.

1903--Expediting Act. To expedite hearings and determination of cases.

1903--Elkins Act. Provided tariffs must be observed. Strengthened law against rebating. Made shippers liable for receiving them. Courts given power to enjoin violations of the law. Dealt forcefully with discrimination and with deviation from published tariffs of carriers' rates and charges.

1906--Hepburn Act (amendment to Elkins Act). Distinctly gave ICC power to prescribe just and reasonable maximum rates and charges, regulations or practices for the future, and through rates and maximum joint rates. Membership of ICC increased from five to seven. Increased jurisdiction of ICC to include express and sleeping car companies, and petroleum pipe lines. Comprehensive definition of the terms railroad and transportation. ICC given power to prescribe forms of accounts and to require various reports and inspect accounts. Increased power over discriminations and to prevent rebates, etc., added "Commodities Clause" (Sec. 1(8)), added duty to establish switch connections (Sec. 1(9)), authorized reasonable allowance to shippers for furnishing transportation services (Sec. 15(13)). The Commission was authorized to employ agents or examiners with authority to administer oaths, examine witnesses, and receive evidence. Provided for enforcement of ICC orders.

1906--Carmack Act. Required common carriers in interstate commerce on receipt of goods to issue receipt or bill of lading. Made carriers liable for loss or damage regardless of any limitation in bill of lading. Initial carrier primarily liable but was entitled to recover from participating carriers. Provided for through bill of lading. See Section 20 (11-12) of the Interstate Commerce Act.

1906--Immunity of Witnesses Act. Provided that immunity provided in compulsory testimony provisions extended only to a natural person (not corporation) who in obedience to a subpoena gives testimony under oath or produces evidence, documentary or otherwise, under oath.

1910--Mann-Elkins Act. Provided for suspension and investigation of rates. ICC given power to conduct investigations on own motion instead of on complaint only. Shipper given power to route under Part I. Changed Section 4 of the Act by deleting words "under substantially similar circumstances and conditions" and placed primary judgment as to 4th Section violations in ICC instead of the carriers; also added aggregate of intermediates, and prohibited increase in rates reduced to meet water competition after that competition had been eliminated. Commerce Court established to enforce ICC orders from which appeal could be taken to the Supreme Court. The Commerce Court failed to operate and abolished in 1913. Brought telegraph, telephone, and cable companies under the Act.

1912--Panama Canal Act. Prohibited railroads from continuing ownership or operation of water lines where competition would thereby be lessened. It also authorized ICC to establish through routes and rates for combination rail-water movements.

1913--Urgent Deficiencies Act. Abolished Commerce Court. Provided procedure for injunctions against ICC orders and judicial review.

1913--Valuation Act. Required valuation of railroads. (Sec. 19a.) Directed ICC to determine the value of property owned or used by railroads.

1914--Clayton Act (Antitrust Act). Contained provisions for regulating competition.

1915-16--Cummins Amendments. Forbade released rates without special permission.

1916--Bill of Lading (Pomerene) Act. Codified negotiability of, and liability under, bills of lading.

1917--Esch Car Service Act. Added paragraphs (10) and (17), inclusive, to Section 1 of the Act. Defined car service and outlined carriers' duties and ICC's powers in relation to car service. Authorized ICC to determine the reasonableness of freight car service rules; prescribe rules in place of those found unreasonable; and in time of emergency, suspend the car service rules and direct car supply to fit the circumstances.

1918--During World War I Government took over the railroads. (Until Transportation Act of 1920--approved Feb. 28, 1920.) Government paid the railroad owners a return equivalent to the net average operating income of the railroads for the period 1915 to 1917.

1920--Transportation Act of 1920. Ended Federal Government control of the railroads. Returned railroads to private operation. Added a rule of rate making (Section 15a). Indicated what should be a fair return and provided for recapture of excess earnings. Permitted pooling of freight when in the public interest. Gave ICC power to authorize control of one carrier by another. Provided for consolidation of railroads into limited number of systems. Directed ICC to devise a program for merging the Nation's railroads, but the plan which was developed was never carried out. Amended car service provisions of Section 1 (10) to (17), inclusive, by authorizing ICC to prescribe general rules as to car supply. Gave emergency powers to Commission. Added Section 1 (18) to (22) to the Act dealing with extensions, etc. Gave Commission specific control over State rates that discriminated against interstate commerce (Section 13(3), (4)). Added Section 20(a) authorizing ICC to regulate issuance of securities as to amount, terms, etc. Prohibited interlocking directors, etc., except as authorized by ICC. Gave ICC power over the divisions of joint rates (Section 15(6)). ICC given power to prescribe minimum and precise rates as well as maximum rates. Section 4 changed by adding equidistant

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clause and "reasonably compensatory" clause, and further providing that rates violating the 4th section would not be allowed based on meeting of merely potential water competition not actually in existence. Paragraph 5 was added to Section 15 providing that no loading and unloading charges for livestock are to be made at public yards. Section 25 was added giving ICC authority to order the installation of certain safety devices. Changed the name of the original statute to Interstate Commerce Act.

1925--Hoch-Smith Resolution. General investigation of rates on livestock and farm products.

1927--Newton Amendment. Amended Section 22(1) permitting reduced rates in case of calamitous disaster. Amended Section 3(2) so that consignees informing carriers that they are agents only are relieved from liability for undercharges discovered after delivery. Suspension period in Section 15(7) set at 7 months. Section 20(11) and (12) extended to the delivering carrier as well as limited carrier.

1933--Emergency Transportation Act. Eliminated "recapture clause" in Section 15(a) and established a new rule of rate making, to carry out the provisions of the Act--to encourage, promote, and require action on the part of the carriers to avoid unnecessary duplication of services and expense, to promote the financial reorganization of carriers, and to provide for a study by a Federal Coordinator of Transportation of means of improving conditions of transportation in all forms. The emergency powers of the Act expired in 1936.

1934--Federal Communications Act passed creating the Federal Communications Commission which took over from ICC the regulation of telegraph, telephone, cable, and radio companies.

1935--Motor Carrier Act (Part II). Brought motor carriers of property and passengers under ICC jurisdiction. Caused the greatest expansion of ICC duties since the Transportation Act of 1920. Field offices were established as well as a bureau to assist in the administration of the Motor Carrier Act.

1937--Bituminous Coal Act. Consumers counsel to represent public before ICC.

1938--Civil Aeronautics Act (now Federal Aviation Act). Permitted through rates between air and other common carriers. Provided for cooperative action relative thereto, between ICC and Civil Aeronautics Board.

1938--Agricultural Adjustment Act. Secretary of Agriculture to plead and appear before ICC.

1940--Transportation Act of 1940. Added National Transportation Policy. Section 1(4) amended, making it duty of rail carriers to establish reasonable through routes with water carriers. Section 1(14)(a) amended to give ICC authority to establish rules and regulations covering all terms of contracts for use of cars, etc., whether or not the equipment is owned by another carrier. Section 3(1) was amended by adding "that this paragraph shall not be construed to apply to discrimination, prejudice or advantage to the traffic of any other carrier of whatever description." Section 3 amended to make it unlawful to give any undue or unreasonable preference or advantage to any region, district, or territory. Section 3(4) requires carriers to afford proper facilities for interchange of traffic. Section 4 made applicable to water carriers and "equidistant clause" was eliminated. Section 202 amended to provide that pickup and delivery services by motor vehicle within terminal areas incidental to transportation subject to Parts I and III would be regulated as transportation subject to those parts. Added and clarified exemptions from Part II regulation (Sections 203(b) (4-a); 203(b), (4-b), etc.). Section 218(a) amended to require schedules of rates as contract motor carriers to contain rates actually charged. Placed common carriers by water under ICC regulation.

1942--Freight Forwarder Act (Part IV) established regulation of freight forwarders.

1945--Land Grant Rates; repeal, effective October 1, 1946.

1946--Administrative Procedure Act. Governs procedure before governmental agencies.

1948--The Mahaffie Act added Section 20b which makes possible the voluntary reorganization of railroads by providing a means of adjusting financial structures without bankruptcy proceedings.

1948--Reed-Bulwinkle Act. Conference method of rate-making not subject to Antitrust.

1949--Statue of Limitations (same as in Part I) added to Parts II, III, and IV.

1950--Amendments to Freight Forwarder Act (Part IV). Forwarders declared common carriers; contract arrangements replace interim through route and rate arrangements with motor common carriers.

1958--(Part V, Loan Guarantee, terminated in 1963.) Section 13a, liberalized discontinuance or change of train operations or services. Section 13(4) amended preference or prejudice, or discrimination against interstate and foreign commerce. Reduced the number of agricultural commodities exempt from ICC regulation when transported by motor carrier (Section 203). Section 15a--revised rule of rate making to effect that rates of a carrier are not to be held up to protect other modes of transportation.

1965--Amendment of Act enabled ICC to deal more efficiently with a number of areas, primarily the problem of curbing illegal motor carriage. New opportunities were created for fruitful cooperation between State and Federal authorities.

1966--Department of Transportation Act. Effective April 1, 1967. Established the Department of Transportation. Safety functions of ICC transferred to Department of Transportation. Time zone jurisdiction also transferred.

1970--Section 303(b) amended. Exemption afforded under section shall not be lost by the concurrent transportation in the same vessel of other commodities.

FEDERAL AVIATION LEGISLATION WITH
CHRONOLOGICAL LIST OF AMENDMENTS AND REVISIONS

1938--Civil Aeronautics Act of 1938, Public Law 75-706, 52 Stat. 973. Established first comprehensive structure for the regulation of the economic and safety aspects of commercial aviation.

1939--Civilian Pilot Training Act, Public Law 76-153, 53 Stat. 855. Authorized Civil Aeronautics Authority to train civilian pilots.

1940--Reorganization Plans Nos. III and IV, P. Recs. No. 75, 54 Stat. 1231. Separated and clarified functions of Civil Aeronautics Board from those of the Administrator of Civil Aeronautics.

1947--Act of August 4, 1947, Public Law 80-346, 61 Stat. 743. Eliminated the requirement for joint rates in cases of through or coordinated service involving an air carrier and common carrier subject to Interstate Commerce Act, and substituted a requirement of just and reasonable rates.

1948--Act of June 29, 1948, Public Law 80-815, 62 Stat. 1093. Authorized Administrator to train air traffic control tower operators.

1949--Act of June 26, 1949, Public Law 81-186, 63 Stat. 480. Provided for the regulation of explosives and other dangerous articles transported by air.

1950--Reorganization Plan No. 13 of 1950, 64 Stat. 1266. Transferred certain CAB administrative responsibilities to the Chairman.

1950--Act of August 3, 1950, Public Law 81-635, 64 Stat. 395. Made it criminal to willfully display misleading markings as to the nationality of aircraft.

War Risk Insurance Act, Public Law 82-123, 65 Stat. 65. Authorized provision of war risk insurance.

1952--Act of July 14, 1952, Public Law 82-539, 66 Stat. 628. Brought ticket agents within the regulatory jurisdiction of CAB for purposes of preventing unfair or deceptive practices, rebates, and unfair methods of competition.

1953--Act of August 8, 1953, Public Law 83-225, 67 Stat. 489. Amended Air Commerce Act so as to transfer certain functions of the Civil Aeronautics Administrator regarding the navigation of foreign civil aircraft to CAB.

1953--Reorganization Plan No. 10 of 1953, 67 Stat. 644. Established separate payment of service mail rate by Postmaster General and subsidy mail rate by CAB.

1955--Act of May 19, 1955, Public Law 84-38, 69 Stat. 49. Provides for the permanent certification of the local service carriers.

1956--Act of July 20, 1956, Public Law 84-741, 70 Stat. 591. Provides for the permanent certification of Hawaiian and Alaskan air carriers.

1956--Act of August 1, 1956, Public Law 84-865, 70 Stat. 784. Authorizes reduced-rate transportation on a space-available basis for ministers of religion.

1957--Act of September 7, 1957, Public Law 85-307, 71 Stat. 629. Authorized CAB to guarantee equipment loans for local service air carriers, metropolitan helicopter service, and certain territorial air carriers.

1958--Federal Aviation Act of 1958, Public Law 85-726, 72 Stat. 731. Recodified the general economic regulatory authority of the Civil Aeronautics Act and established the Federal Aviation Agency to regulate safety and provide for safe and efficient use of airspace by civil and military aircraft.

1959--Act of July 8, 1959, Public Law 86-81, 73 Stat. 180. Facilities financing of aircraft engines and propellers.

1959--Act of August 29, 1959, Public Law 86-199, 73 Stat. 427. Authorized use of airmail for service of process.

1960--Act of July 12, 1960, Public Law 86-627, 74 Stat. 445. Clarified provisions relating to free or reduced-rate transportation for employees and directors of air carriers, and their families.

1960--Act of July 14, 1960, Public Law 86-661, 74 Stat. 527. Provided for temporary authorization for certain air carriers to engage in supplemental air transportation.

1960--Act of September 13, 1960, Public Law 86-758, 74 Stat. 901. Authorized the elimination of a hearing in certain cases arising under Sec. 408 of the Act.

1961--Act of September 13, 1961, Public Law 87-225, 75 Stat. 497. Provides for reasonable notice of applications to the United States Courts of Appeals for interlocutory relief against orders of the Board (and other agencies).

1961--Reorganization Plan No. 3 of 1961, 75 Stat. 837. Authorized CAB to delegate functions to the staff and provided for the transfer of certain functions to the chairman.

1962--Act of July 10, 1962, Public Law 87-528, 76 Stat. 143. Provided for permanent certification of the supplemental air carriers and for civil penalties for certain economic violations.

1962--Act of October 15, 1962, Public Law 87-810, 76 Stat. 921. Provided additional authority to CAB in the investigation of aircraft accidents.

1962--Act of October 15, 1962, Public Law 87-820, 76 Stat. 936. Provided for the transfer of the loan guaranty functions to the Secretary of Commerce.

1966--Department of Transportation Act, Public Law 89-670, 80 Stat. 931. Established the Department of Transportation and transferred the Board's safety and accident investigation functions to the National Transportation Safety Board within the Department.

1969--Public Law 91-62, approved August 29, 1969, the law requires CAB approval of the acquisition by any person of control of an air carrier as of August 5, 1969. CAB is authorized to exempt any acquisition of control of a noncertificated air carrier from the approval requirement to the extent that such may be in the public interest.

Unless CAB finds otherwise, any person owning beneficially 10 percent or more of the voting securities or capital of an air carrier is presumed to be in control of the carrier. This law also requires any person owning, beneficially or as trustee, more than 5 percent of any class of the capital stock or capital of an air carrier to submit annually, and at such other times as CAB may require, a description of the stock or other interest owned and the amount.

1970--The Airport and Airway Development Act of 1970 (Public Law 91-258, approved May 21, 1970) provides, in substitution for the Federal Airport Act, large-scale Federal assistance for expansion and improvement of the Nation's airport and airway system. To provide additional revenue for the financing of the Federal assistance, the Act imposes new and increased aviation user charges. In order to insure that the aviation user charges are expended only for the expansion and improvement of the airport and airway system, an "Airport and Airway Trust Fund" is established, into which such user charges are deposited.

1970--On April 3, 1970, Public Law 91-224, the Water Quality Improvement Act of 1970, was approved. Section 11(p)(1) requires that any vessel over 300 gross tons, using any port or place in the United States or the navigable waters of the United States, establish and maintain evidence of financial responsibility of $100 per gross ton, or $14 million whichever is the lesser, to meet the liability to the United States to which the vessel could be subjected under the Act, for the cost of cleanup of spilled oil. The President, on June 2, 1970, delegated to FMC the responsibility to carry out the provisions of the Act pertaining to this financial responsibility.

PRINCIPAL MERCHANT MARINE AND SHIPPING ACTS

1916--Shipping Act of 1916, 39 Stat. 728, established the first comprehensive program for the development of the U.S. merchant marine and for a structure of regulation of common carriers by water engaged in foreign commerce. It remains the basic act in regulation of steamship conferences and lines.

1920--Merchant Marine Act of 1920, 41 Stat. 988, provided for establishment of fleet operations in foreign and domestic service by sale of Government constructed vessels of the Emergency Fleet Corporation, and provided assistance to private operations through insurance and construction aid.

1925--Home Port Act (1925), 43 Stat. 947 required every vessel of the United States to have a home port in the United States.

1928--Merchant Marine Act of 1928, 45 Stat. 689, provided for substantial aid to U.S. merchant fleets through an indirect subsidy of mail contracts.

1933--Intercoastal Shipping Act, 1933, 45 Stat. 1425, provided for the regulation of common carriers by water engaged in intercoastal commerce. The Transportation Act of 1940 transferred this jurisdiction, except for offshore domestic shipping, to the Interstate Commerce Commission.

1936--Merchant Marine Act of 1936, 49 Stat. 1985, remains the basic act for the maintenance of the U.S. merchant marine. It made direct subsidy through construction and operating contracts the principal support. Mail aid was abolished but other indirect aids continue.

1936--Carriage of Goods by Sea Act, (1936) 49 Stat. 1208, incorporated the basic exemptions of liability of the Harter Act, but added to protection of shipper in regard to inspection after delivery and in other ways.

1940--Transportation Act of 1940, 54 Stat. 898, transferred the regulation of coastwise and intercoastal (except offshore), shipping to the Interstate Commerce Commission.

1954--Emergency Foreign Vessels Acquisition Act, Public Law 569, authorizes the Secretary of Commerce to purchase or requisition, any merchant vessel lying idle in U.S. waters in event of a national emergency.

1967--Reorganization Plan No. 7 of 1967 (75 Stat. 840), provided for the transfer of the regulatory functions of the Federal Maritime Board respecting rates, services, practices, agreements, and discrimination of common carrier lines and conferences engaged in offshore domestic trade to the Federal Maritime Commission. Regulation of subsidy contracts was transferred to the Maritime Administration of the Department of Commerce.

1970--Public Law 91-469(1970) amended the Merchant Marine Act of 1936 to make bulk cargo carrying services under the American flag eligible to construction subsidy.

Source: Transportation Regulation
Marvin L. Fair and John Guandolo
William C. Brown Pub. Dubuque, Iowa 7th Ed.
1972 pp. 27-34

APPENDIX IV

CURRENT ADMINISTRATION AND AGENCY REGULATORY REFORM ACTIVITIES IN BRIEF AS OF OCTOBER 10, 1975 1/

The administration has proposed various regulatory reforms covering a wide selection of regulation controls during recent months. There has been some tendency to mix economic regulatory reforms with changes in health and safety regulation, but in the transportation area, the proposals have been restricted to changes in regulation as administered by CAB and ICC. The administration has developed its proposals and has submitted several bills for consideration and has indicated that it is considering at least one other transportation regulatory change.

Within the administration the primary responsibility for regulatory reform has fallen on a task force, the Domestic Council Review Group on Regulatory Reform headed by Counsel to the President Roderick M. Hills. (Mr. Hills has only recently been nominated as chairman of the Securities and Exchange Commission.) President Gerald Ford has also provided additional administration viewpoint to the transportation regulatory agencies through his appointment of Mr. John E. Robson as head of CAB and nomination of Mr. Karl E. Bakkee as chairman of FMC. Moreover, it is expected that the President will soon be appointing a new ICC chairman.

ICC

ICC completed its own internal staff study for regulatory modernization in July 1975, which resulted in more than 60 recommendations for change, mostly internal and procedural. Many of the proposals deal with the problems of regulatory delay and lack of rate and service flexibility, primarily through internal changes, though several proposals would require minor legislative change.

The administration has made several proposals for altering ICC's regulatory role, addressing the problems of each mode in separate legislation. The only official proposal to date concerns railroad regulation and was included as part of the legislation to restructure the Northeast railroads. Among other matters, the act would:

1/The information in appendix III was gathered from articles on, and public announcements from, the regulatory agencies involved and is intended solely as background to the issues raised in this report.

--Permit railroads to increase or decrease rates 7 percent the first year, an additional 12 percent the second year, and another 15 percent the third year. After the third year, rate increases of 15 percent and rate reductions down to cost would be permitted without being subject to ICC suspension.

--Set time limits for ICC action in rate cases.

--Prohibit ICC from protecting carriers against competition from another mode.

--Remove antitrust immunities from certain rate bureau practices.

An unofficial, or as yet unannounced, proposal relative to ICC regulation of motor carriers 1/ was "previewed" by Mr. Millard M. Holden, president of the Independent Produce Haulers of America, on July 16, 1975, in a press conference held at the Department of Transportation. According to Mr. Holden, the forthcoming legislation on motor carriers is expected to call for ways to end some "dead-heading" or empty backhauls, by exempting small independent truckers from certain ICC regulation. Other specifics are unannounced but are said to be contained in a trucking bill scheduled to be completed within the next few weeks.

There has been no indication of any administration proposals to modify ICC regulation of water carriers.

FMC

The administration has not proposed any regulatory changes in FMC, nor have there been any internally generated proposals for change. The only administration activity involving FMC is the recent nomination of a new chairman as previously mentioned.

CAB

CAB has completed several studies, primarily through consultants which led it to propose an experiment with deregulation, limited in duration and restricted to traffic over a few selected routes.

1/The administration's motor carrier legislation was submitted to the Congress during the week of November 10, 1975, too late for inclusion within this discussion.

The administration proposal, released at the beginning of October, goes further toward deregulation and covers a broader range of regulatory change. This proposal, which is to be phased in over a 5-year period, includes the following:

--Permits airlines to raise fares up to 10 percent per year without CAB approval and reduce them to the level of operating cost, with cuts up to 20 percent the first year and another 20 percent the second.

--Various required operating services, such as required through plane service, would be eliminated.

--Beginning in 1981 airlines could expand their route systems by 5 percent per year for trunk lines and 10 percent per year for local-service carriers.

--Charter airlines could apply to CAB for individually ticketed, scheduled service.

--CAB would lose authority to approve certain joint agreements and more industry action would become subject to antitrust. Exemptions would remain for certain interline services, such as ticketing.

--Enable carriers to more easily drop unprofitable routes.